UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

- -x

In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 26, 2014

10:01 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(CC: Doc# 6174) Adj. Hrg. RE: Motion of Citibank, N.A. for an Order (I) Determining that it is Entitled to Post-Petition Interest on its Oversecured MSR Facility Claims at the Contractual Default Rate, and (II) Directing Debtors to Pay such Interest as well as Citibank's Due and Unpaid Counsel Fees and Expenses.

(CC: Doc# 6527, 6621, 6635) Ally Financial Inc.'s Motion for an Order Enforcing the Chapter 11 Plan Injunction.

(CC: Doc# 5162) Adj. Hrg. Re: Motion for Omnibus Objection to Claim(s) / Debtors' Fiftieth Omnibus Objection to Claims (No Liability Borrower Claims - Books and Records).
Going forward solely as it relates to the claim filed by Jacqueline Warner (Claim No. 3502).

(CC: Doc# 6305, 6455) Motion for Omnibus Objection to Claim(s)/ The ResCap Borrower Claims Trusts Fifty-Eighth Omnibus Objection to (A) Amended and Superseded Borrower Claims; (B) Late Filed Borrower Claims; and (C) Non-Debtor Borrower Claims. This matter, solely as it relates to the claims filed by Walter Olszewski (Claim Nos. 7163 and 7172), has been withdrawn. The hearing on this matter as it relates to all other claimants will be going forward.

(CC: Doc# 6448) Motion for Omnibus Objection to Claim(s) / ResCap Borrower Claims Trusts Fifty-Ninth Omnibus Objection to Claims (Insufficient Documentation Borrower Claims).
The hearing on this matter, as it relates to the claims filed by Annie Trammell and Alfredia Holiday, has been adjourned to April 24, 2014. The hearing on this matter as it relates to all other claimants will be going forward.

(CC: Doc# 6457) Motion for Omnibus Objection to Claim(s)/ ResCap Borrower Claim Trusts Sixtieth Omnibus Objection to Claims (Res Judicata Borrower Claims).

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P R O C E E D I N G S

THE COURT: All right. Please be seated. We're here on Residential Capital, number 12-12020.

MR. WISHNEW: Good morning, Your Honor. Jordan Wishnew, Morrison & Foerster.

Your Honor, the first contested matter on today's agenda appears on page 7, the motion of Citibank for its entitlement of post-petition default interest. In that regard, I'll turn the podium over to my colleagues from Kramer Levin on behalf of the ResCap liquidating trust.

THE COURT: Thank you.

MR. ROLL: Your Honor, if I may. William Roll of Shearman & Sterling, appearing along with my partner Fred Sosnick for Citibank, N.A.

THE COURT: All right. Let me get the other appearances.

MR. HOROWITZ: Thank you, Your Honor. Gregory Horowitz of Kramer Levin, on behalf of the ResCap liquidating trust.

THE COURT: All right. Go ahead.

MR. ROLL: Again, William Roll, Your Honor. And I'm assuming that because it's our motion the Court would prefer --

THE COURT: Yes.

MR. ROLL: -- to hear us first.

THE COURT: Absolutely.

MR. ROLL: Thank you, Your Honor. As indicated, this is Citibank's motion for an order directing the payment of interest from the petition date through today, at the default rate specified in the bank's pre-petition MSR facility, and secondly for --

THE COURT: When you say --

MR. ROLL: -- reimbursement of legal fees incurred --

THE COURT: I thought you were repaid. You say payment through today. You were -- Citibank was -- when was the loan -- the principal and contract interest were repaid when?

MR. ROLL: They were repaid shortly after the closing of the Walter sale on January 31, 2013.

THE COURT: Okay.

MR. ROLL: But there is -- there would still be something owed to use from that date through today, in the sense of there being a differential, as we see it, between the nondefault rate and the default rate from the petition date through that date.

THE COURT: Okay.

MR. ROLL: So I'm not saying it's a large amount from that date through today, but it does exist. And our claim for reimbursement is for those fees incurred in pursuing the claim for that interest. And we're seeking that under both the MSR credit agreement provision providing for attorneys' fees and

the cash collateral order itself.

The parties to this controversy have decided that -- have determined that the facts material to each side's position are undisputed, so the parties have put together a stipulation of facts and filed that some days ago now, Your Honor, so I hope the Court has that.

THE COURT: Yes.

MR. ROLL: And let me start by pointing out three of the most fundamental of those undisputed facts.

First, Citibank was an oversecured creditor here; there's no dispute about that. We've stipulated to that. There was also a specific finding to that effect in the cash collateral order.

Secondly, we did have a contract, the MSR credit facility, that did specify a default rate to be applicable upon the occurrence of a default. And thirdly -- and there's no dispute about that. And thirdly -- and there's no dispute about what the rate was.

And thirdly, there is no dispute that a default actually occurred here.

THE COURT: Well, when did the default occur?

MR. ROLL: The default occurred on the filing of the petition.

THE COURT: The loan was current up to the filing of the petition?

MR. ROLL: The loan was current until the filing of the petition. The filing constituted an event of default. The maturity would have been -- or was, in fact, at that point, sixteen days after the petition date. So had the petition not intervened, we would have been paid sixteen days later.

THE COURT: I know this is not in the stipulation, but was the loan agreement amended in contemplation of the filing of bankruptcy?

MR. ROLL: The loan agreement was amended a number of times. I think it's --

THE COURT: But the last time it was in March and it was --

MR. ROLL: It was.

THE COURT: -- pretty much on the eve of --

MR. ROLL: It was.

THE COURT: -- the bankruptcy.

MR. ROLL: It was. And to be candid, Your Honor, the stipulation does indicate that the parties have agreed that that last amendment was done with bankruptcy in mind.

THE COURT: Okay.

MR. ROLL: So there were things done at that point with bankruptcy being contemplated. The one thing that was not done, despite the ability for the parties to do that, was to change the default rate, to eliminate the default rate altogether, or to change the rate specified upon default, to

change the filing of bankruptcy as an event of default. There are a lot of things the parties could have done but did not do.

THE COURT: But you -- I take it you agree that post-petition interest is governed by the Bankruptcy Code 506 --

MR. ROLL: Um-hum.

THE COURT: -- and not by the contract. It may be presumptive that the contract rate would apply, but you're not arguing that the Court is bound by the contract rate in awarding post-petition interest to an oversecured creditor?

MR. ROLL: Not bound by it exclusively. What we are arguing, though, Your Honor, is that there is, under all the cases -- and flowing especially from Travelers, the Supreme Court decision in 2007, which I can elaborate on in a second -- that there is a rebuttable presumption that it's the contract rate that applies. It can be rebutted by showing that there's something under nonbankruptcy law that would render that contract or the underlying substantive --

THE COURT: No, more than that, I mean, because the way I read the cases is that the Court has limited discretion, based on equitable bankruptcy considerations --

MR. ROLL: Yes.

THE COURT: -- to award post-petition interest at something other than the contract rate. Do you agree?

MR. ROLL: I agree that the Court has discretion to do that.

THE COURT: Okay.

MR. ROLL: Yes, and I --

THE COURT: And Travelers doesn't really alter that, and cases since Travelers have continued to apply the principle that the bankruptcy court has discretion to award post-petition interest at something other than the contract rate, correct?

MR. ROLL: Well, here's what I believe the cases say, Your Honor. It's not far from what Your Honor has said, but I want to make sure we're clear about where we do differ with the articulation the Court just gave. In the first instance -- and this is what the Supreme Court said in Travelers -- in the first instance you look to the underlying substantive law, in this case the law of contract, and the contract itself, for the specification of the creditor's entitlement. That's where you look first. That's then subject to any qualifying language in the Bankruptcy Code or other considerations. And it's the other considerations into which you -- you lump the equitable considerations.

THE COURT: We all agree about that, okay?

MR. ROLL: Okay. But I think it is important that, in the first instance, you look to the contract. And the cases, including the cases by other judges in this courthouse, Judge Bernstein recently in two cases, the 92nd Street Associates case and the 785 Partners case --

THE COURT: So but in 785 Partners, yes, the creditor

was oversecured --

MR. ROLL: Um-hum.

THE COURT: -- but unsecured creditors were being paid in full and it was a solvent debtor and the issue was, essentially -- I mean, I think Judge Bernstein doesn't quite describe it this way, but I think it's pretty close -- I mean, it's the issue of whether the secured lender should get interest at the default rate or whether equity should benefit from it. It wasn't a case in which unsecured creditors were going to be paid less than full.

MR. ROLL: That's correct, Your Honor.

THE COURT: So my question to you is, are there any cases -- let's start with this district -- where the Court has awarded post-petition interest at a contract default rate where unsecured creditors are being paid less than the full amount?

MR. ROLL: I can't cite to a case in this district, Your Honor, but what I can --

THE COURT: Are there any recent decisions from courts in other -- other bankruptcy courts awarding full default interest in case -- on post-petition amount where unsecured creditors are impaired?

MR. ROLL: I don't know of any, Your Honor, but what I do know is that in every one of those cases the courts have all, including Judge Bernstein, in both the cases we mentioned, and Judge Gerber before that, in the Urban Communicators case,

admitted of the possibility of there being payment of default interest.

THE COURT: Oh, I don't doubt that there's a possibility of it.

MR. ROLL: And it came down to the look at the equitable factors that we were both mentioning a short time ago. And --

THE COURT: Well, one of those equitable factors would be what's the situation of the unsecured creditors --

MR. ROLL: Right --

THE COURT: -- in the case.

MR. ROLL: -- it's the solvency question. We don't disagree. That's one of the factors. I happen to think -- we happen to think, and we argue in our papers, and I'll argue today that when you look at that issue here, it doesn't compel a conclusion that the default rate shouldn't apply because the amount we're seeking is miniscule.

THE COURT: Oh, it's not miniscule, come on.

MR. ROLL: It's miniscule in comparison --

THE COURT: Not to me.

MR. ROLL: Well, or to me either. To each of us as people; think about what's in our pockets at any given time. But in comparison to the pot that's distributable, it's about .2 percent; it's two-tenths of a percent. It was also -- and I --

THE COURT: So I'm going to take out my violin and really feel for Citibank on this one.

MR. ROLL: Right. Well, here's -- you don't have to feel for Citibank, but you do have -- one does have to note also that this was -- the risk of this happening, the risk of this day occurring was fully disclosed in the disclosure statement. The controversy --

THE COURT: Sure.

MR. ROLL: -- was there.

THE COURT: And when you entered into the amended loan agreement it was in contemplation of bankruptcy, so everybody had their eye on the ball about what this was really about.

MR. ROLL: That's right. And I don't think there's any reason the bank has to feel embarrassed, for lack of a better word about --

THE COURT: Citibank shouldn't feel embarrassed.

MR. ROLL: -- about seeking something it's entitled to under the agreement, especially if the law is pretty clear that presumptively that's what'll apply. And --

THE COURT: That may be a bigger issue for me on the attorneys' fees issue, because you're certainly litigating over a valid issue. So I separate out the issue of what attorneys' fees Citibank is entitled to recover versus what -- and I haven't decided -- I want to be clear. I may -- my questions shouldn't suggest to you that I've decided this issue, because

I haven't.

MR. ROLL: Okay.

THE COURT: Okay.

MR. ROLL: I appreciate that, Your Honor. I do think, before we actually look at the equitable factors here -- and we've already touched on the solvency issue and the payment to unsecureds, that issue. There are others at play here, as Your Honor probably knows from reading the papers. Before we get to that, I do think it's worth pausing and noting that every one of these cases we've talked about, and one we haven't talked about -- the one written by the great Judge Posner in the Lapiana decision in the Seventh Circuit, which I think has some language that is useful. Every one of these cases has said the equitable inquiry here ought to be a limited one. The equitable power exercised by the court ought to be exercised with a very light touch.

As Judge Posner said in Lapiana, he said that Section 506(b) is "not an invitation to a free-for-all equity-balancing act". He went on to say "We deprecate flaccid invocations of 'equity' in bankruptcy proceedings. Creditors have rights, among them the right of oversecured creditors to post-petition interest, and bankruptcy judges are not empowered to dissolve rights in the name of equity." And --

THE COURT: That's not an issue of dissolving the rights of post-petition interest. You got post-petition

interest; the question is whether you're entitled at the default rate or some other rate.

MR. ROLL: Understood. So let me talk about the factors. The courts usually refer to four, only one of which applies here. Misconduct by the creditor; there's no issue of misconduct.

THE COURT: No.

MR. ROLL: Direct harm to the unsecureds; that's the solvency issue. Prevention of a fresh start by the debtor; not an issue here. And whether the right to be applied constitutes a penalty. Now, I --

THE COURT: This is not a penalty.

MR. ROLL: It's not a penalty --

THE COURT: Don't -- let's --

MR. ROLL: -- and I haven't argued that.

THE COURT: -- not go to the penalty.

MR. ROLL: So it's really just harm to the unsecureds --

THE COURT: That's right.

MR. ROLL: -- and some other stuff that they've thrown in which, if the Court permits, I'd like to address --

THE COURT: Okay.

MR. ROLL: -- as long as I'm up here. On the harm to the unsecureds, it really does come down to what, I will again say, is a miniscule amount. I heard what the Court said

earlier about that. It is all --

THE COURT: That miniscule amount is how much?

MR. ROLL: Five million dollars.

THE COURT: Five million dollars.

MR. ROLL: 5 and change, 5.04 million out of 2.462 billion, with a B, in the pot to be distributed to the unsecureds. It was fully disclosed. And more than that, this is the very type of risk that creditors are always understood to take. Unsecured creditors understand that there is a risk -- or they're deemed to understand that there is a risk that secured creditors will be paid up to the extent of any equity cushion that they have. We had an equity cushion here. We were oversecured. And the understanding ought to be, at least constructively, and I think the cases recognize this, that this, the kind of thing we're asking for today, could happen to them.

THE COURT: Let me ask this. There was a cash collateral stipulation --

MR. ROLL: Yes.

THE COURT: -- that entitled Citibank to adequate protection payments of the nondefault contract rate of interest.

MR. ROLL: Right.

THE COURT: Was there a gap between the filing and Citibank actually being paid current interest? In other words,

because the filing of the case stopped the payment of interest.

MR. ROLL: Right.

THE COURT: But the cash collateral stipulation authorized the payment. So was there any gap?

MR. ROLL: I think it -- I don't -- I think it was minor, if there was one.

THE COURT: Okay.

MR. ROLL: I think for practical purposes there was not.

THE COURT: So in -- I didn't find -- the issue I'm going to raise I didn't find in any of the cases, but -- and probably, I guess it wouldn't make much difference here. The maturity date of this was March 30th; is that -- or May 30th, excuse me -- May 30th, 2012.

MR. ROLL: Correct.

THE COURT: It looks like two weeks after the --

MR. ROLL: Correct.

THE COURT: -- the bankruptcy petitions were filed. Do you think it would make a difference in the case if the maturity date was further out, if you were repaid the full amount before the loan had matured versus when the loan had matured?

MR. ROLL: Analytically, I don't think so, Your Honor. I mean, we might -- if I'm understanding the Court's question correctly, if we had been paid, you know, from -- shortly after

the petition date during a longer period --

THE COURT: I guess the reason --

MR. ROLL: -- up to maturity --

THE COURT: The difference -- potential difference I see -- and here I don't think it makes -- because this clearly was the loan amendment in contemplation of the bankruptcy filing. There was only about two weeks that we're talking about. When a lender negotiates a loan for a specific term, it's not contemplating that that loan's going to be extended longer. And that may go into how a lender sets its interest rates; for example, the risk that it's taking, extended maturity. Here what we're talking -- it was only seven months before you got repaid.

MR. ROLL: Um-hum.

THE COURT: In any event, this may not be a factor here, but I'm just --

MR. ROLL: It's hard to know, Your Honor. I --

THE COURT: Okay. I just --

MR. ROLL: -- think we'd be speculating as to what was on people's minds at that point.

THE COURT: Well, I -- I'm sure what was on Citibank's mind was, okay, they're going to file and we're going to seek post-petition interest at the default rate. And the debtor may have thought that's in the contract, but the law is that the bankruptcy judge -- that the contract is not going to control.

It may be the first thing to look at.

MR. ROLL: Well, there would have -- if that's what the debtor were thinking or concerned about at the time, it could easily have said, in the negotiation of amendment number 10, let's strike the default rate. They could have --

THE COURT: They didn't have to. I mean, you all knew what the law was when it was entered into.

MR. ROLL: Why not? If they're at the point of amending, why not? At a later point, they could have asked that a provision to that effect be included in the cash collateral stipulation. They could have argued over it at the time.

THE COURT: You wouldn't have agreed.

MR. ROLL: Right, there are -- what happened instead was there is a final cash collateral order entered by this court, which basically says that the proceeds from the sale of our collateral -- the eventual sale of our collateral would be used to pay off the capital obligations.

THE COURT: Sure, you reserved the issue of whether you were entitled to interest at the default rate.

MR. ROLL: Exactly. So nobody was surprised here.

THE COURT: No, and I'm not suggesting anybody was surprised.

MR. ROLL: And if what they've argued or what the Court is suggesting is that we ought to have understood, by

reason of what happened at that time, that this motion would be subject entirely to the Court's discretion, I don't think we would have seen the law --

THE COURT: Well, I wouldn't say entirely. You knew what the law was and they knew what the law was. This was no secret.

MR. ROLL: We did. And what we knew the law to be was as I described it earlier which is, in the first instance, the contract rate applies, unless there's some equitable --

THE COURT: Well, that's why I asked whether there are any insolvent debtor cases where the court has explained why it was awarding post-petition interest at the default rate.

MR. ROLL: None that I can identify for Your --

THE COURT: Okay.

MR. ROLL: -- for Your Honor. But I can tell you, as I've said before, that in the solvent debtor cases --

THE COURT: Solvent --

MR. ROLL: -- that the Courts have said that --

THE COURT: If this was a solvent -- I have solvent -- a few --

MR. ROLL: Right.

THE COURT: Very few; I mean, we don't get very many solvent debtors here, but yes, I've had solvent debtor cases, and yes, I've said pay it at the contract rate; if it's a default, it's a default.

MR. ROLL: Right.

THE COURT: As between creditors and equity --

MR. ROLL: Yeah.

THE COURT: -- it's basically what Judge Bernstein did. Okay? And I've done that. But what I haven't had is this issue arise in an insolvent debtor case.

MR. ROLL: I have no doubt that's correct, Your Honor, and that that's -- I mean, that's something the Court has to consider, obviously.

But I would say a couple of things. One is that in every one of those -- in every one of those instances, it was just one factor among many that the court looked at.

Secondly, I'm reminded by my colleague, Mr. Sosnick, that the Terry case, the Seventh Circuit decision, involved a payment to insolvent equity, the payment of default interest with insolvent equity. And the dispute there was between first and second lien creditors. So it's one instance, perhaps. It's an older case. But I know it's an issue.

Here, though, I really do have to come back to how small this is, how readily known this was, how easy to understand it was for everybody on the scene that we were going to be doing this, and that even if it were only an equitable inquiry, even if it were only that, we'd be in good stead standing here asking for the payment of interest.

The unsecured creditors in this case, they're not

getting 100 cents on the dollar, but --

THE COURT: Far from it.

MR. ROLL: -- but they're not getting zero either. They're doing a lot better than a lot of other cases, and it's pertinent to the comparison of who's doing what here, of who's being hurt. And an argument -- I think a good argument can be made that, in effect, abrogating the contractual provision, when it was fully in view of everybody at the time all this happened, is just as --

THE COURT: I'm not abrogating --

MR. ROLL: -- as big a harm to the --

THE COURT: -- a contract provision. You've acknowledged the contract provision doesn't control. So I'm not abrogating a cont -- even if I decide for the trust, I'm not abrogating a contract provision.

MR. ROLL: Well, in a manner of speaking, with all due respect, I think that's what the Court would be doing if it denied that. It would be substituting a judgment that the set of equitable considerations present here trump the presumptive viability of the contract rate -- of the existence of the contract which is otherwise enforceable. There's no claim that the agreement is unenforceable.

I actually think it would run afoul of the literal terms of Travelers, which didn't even talk about equity; it talked about contract provisions in the Bankruptcy Code or

other aspects of the underlying substantive law. There's none of that here. Their position -- the trust's position is entirely based on equity. And as I hear the Court's concerns, they're all within the rubric of equity. And although we might quibble over whether what would be happening with the denial of our motion, whether it's an abrogation of the contract or not, it's an impediment to our proceeding as if the contract provision applies. I don't want to get hung up on the words we use, but in effect, it would be the substitution of a judgment that the equitable factors here trump the presumptive -- the presumptive and presumptively legal and presumptively applicable contract rate.

THE COURT: How much in attorneys' fees are you seek -- because you're -- the bank's attorneys' fees were paid through when?

MR. ROLL: The bank's attorneys' fees were paid through -- I think it was early in 2013, shortly after the sale, shortly after we were paid. The specifics are actually in our reply papers. It was up to a point in mid-2013, I believe. The ones that have not been -- the bills that have not been paid I think were something less than all that were rendered in the post-petition period. And the total amount we're seeking in attorneys' fees is in the mid-hundreds of thousands. I'll get the exact number for the Court in a second.

I don't know if the Court's interested in hearing about the other factors the trust raises and our position on them --

THE COURT: Go ahead.

MR. ROLL: -- but I do feel duty bound to go into them --

THE COURT: Sure.

MR. ROLL: -- because there is more to their position than just the solvency issue, and I think that's a recognition on their part that they had to find something else. They make a large bit about, you know, we were not harmed by the -- we're not going to be harmed by it because we got the "benefit" of our bargain by reason of being paid the principal and interest at the nondefault rate after the closing of that sale. It's actually not right. The benefit of the bargain would have been to be repaid in full at maturity, sixteen days after the --

THE COURT: That's why I asked my question about maturity. If the maturity of the loan had been a year later, but you were repaid prior to maturity -- so we negotiate a loan, here in contemplation of bankruptcy, but with a maturity less than a month after the bankruptcy petition was filed. I'm not articulating it particularly well, but I'm just -- and that's what I was wondering, whether in terms of the equitable factors that go into it, you negotiated to get your money back on a particular date; while you were paid nondefault contract

interest thereafter, you didn't get your money back on the particular date. Lenders generally price loans based on risk, maturity, et cetera. So that was a change. That was something -- and that's why -- I mean, here it was, like, two weeks, so you obviously timed the maturity of this loan to pretty closely coincide with when the expected filing date was.

MR. ROLL: I understand -- now I understand the --

THE COURT: So I'm just wond -- when I started thinking about well, what are the equitable factors and should the presumptive default rate apply here, Mr. Horowitz is going to tell me why he doesn't think an equitable factor, on Citibank's side, is that the loan matured and, in effect, it was an involuntary extension of the maturity date for close to seven months. Okay. So that's what I -- I'm struggling to articulate exactly, but I think that's closer to what I was mulling about.

MR. ROLL: Well, I think -- I don't know if this is pertinent to that, but it does appear that if you look at all of the amendments, every one of the -- because there were a host of extensions; there were ten extensions, basically, and each of them was in the neighborhood of --

UNIDENTIFIED SPEAKER: Except one.

MR. ROLL: -- all but one. Yeah, all but one. One was just on another point. They were all for relatively limited periods of time. So there was nothing --

THE COURT: You put them on a short fuse, basically.

MR. ROLL: Yes, so it's easy to say now that the last one was in contemplation of bankruptcy. You could --

THE COURT: I'm not saying there's anything wrong with it. That's what it appears, okay?

MR. ROLL: No, but the -- whether we were -- the extent to which we were contemplating it all along; I mean, we knew it was a possibility.

THE COURT: Sure.

MR. ROLL: And obviously there were reasons for the loan to have to be extended in the first place, that bore on that question and the health of the debtor. But the fact of the matter is, I don't think we had any particular or particularized or particularly better knowledge, at the time of the last amendment, that we were only looking at that shorter fuse.

I think the expectation was we would get repaid --

THE COURT: And you did.

MR. ROLL: And we did, but seven or eight months later. And for a bank like Citibank not to be able to redeploy capital for seven or eight months, that's what they're in business to do; that's a big deal. So it's --

THE COURT: So you're articulating what, among the factors that are the equitable -- that I would say would balance on the scale of equitable considerations in support of

permitting Citibank to recover default interest -- contract default interest for the period, because you had, in effect, an involuntary extension of the maturity date of the loan.

MR. ROLL: Yes.

THE COURT: That wasn't what was bargained for initially.

MR. ROLL: Yes, and I now apologize for not having followed --

THE COURT: No --

MR. ROLL: -- the Court's question earlier.

THE COURT: -- I mean, I wasn't articulating it very well.

MR. ROLL: But that's --

THE COURT: But --

MR. ROLL: But that's really -- I mean, that is the point. I mean, they're saying we weren't harmed; I'm saying we were harmed, because as I've indicated, there was an expectation, a rolling expectation, if you will, that we would be paid relatively soon. They kept asking for more time and we kept giving them more time. But I think, our view, the institutional of the bank was the maturity date is a real date, and we expect to be paid on that date.

THE COURT: Okay.

MR. ROLL: To not be paid on that date put us in jeopardy. And that actually segues to another one of their

concerns, which was that even though there was a delay, we were never really at risk during the course of the bankruptcy. I mean, that really does overlook what we thought of as a very important factor in that period, the fact that we were subordinated to the GSE's positions. And the sales by the debtor of assets, including our collateral, were all subject to an effective veto by the GSEs. And they, in fact, asserted rather large first priority claims that would come ahead of us. So that was a period of considerable uncertainty for us, and we set forth all that language from the agreements with the acknowledgement agreements with the GSEs in the stipulated facts so the Court could see exactly what we were facing.

So until the very moment when the debtors arrived at the settlements with the GSEs, with Fannie Mae and Freddie Mac, over what they would be getting as a result of the sales, it was entirely unclear to us, entirely uncertain, in our contemplation, that we were going to get anything with respect to our collateral, our secured position.

So we were very much at risk during that period. I mean, that, I think, is an equitable factor that ought to be weighed here too. We took a huge risk during that period. We could have ended up with --

THE COURT: Don't overstate it; you took a risk.

MR. ROLL: We took a risk. We took a risk based on a very large claim ahead of us and a set of powers, if you will,

ahead of us, that could have put us very much in a much worse position. Things worked out. The debtors did a nice job reaching agreement, getting the sales approved and all of that. And we were paid.

THE COURT: Why didn't it seem so easy while it was going on?

MR. ROLL: Because it never does, Your Honor.

But that's -- I think that's a point that's easy to overlook. We were sitting here watching, but uncertain at that time. And it was a time in which we were thinking, for what that's worth, that at the end of all this, if it works out, we should also be entitled to the default --

THE COURT: Okay. I have your -- I do understand your arguments.

MR. ROLL: Okay. And the same goes for the notion that we somehow -- the adequate protection payments were enough. Same issue. The adequate protection liens we got would not have amounted to much, had we not been able to actually -- had they not been able to come to some agreement with the GSEs and allow us to recover something from the collateral as it was sold.

So I think Your Honor does get the gist.

THE COURT: Okay.

MR. ROLL: I'll cede the podium at this point.

THE COURT: All right. I'll give you a chance for

rebuttal if you need it.

MR. ROLL: I appreciate that.

THE COURT: Mr. Horowitz?

MR. HOROWITZ: Thank you, Your Honor. Greg Horowitz from Kramer Levin, on behalf of the ResCap liquidating trust.

Your Honor, I have a two-page demonstrative exhibit that I'm going to make reference during the argument, if I could.

THE COURT: Please go ahead. You always have a demonstrative for me.

MR. HOROWITZ: No PowerPoint.

THE COURT: Well -- thank you.

MR. HOROWITZ: I'm not real big on charts unless they have a point. I'll make reference to that in a few minutes, Your Honor.

Your Honor, I'm going to just spend a little bit of time on the law, and I'm going to highlight a significant number of facts that I believe the Court may not be fully aware of because they weren't highlighted in our response. They came to the fore in connection with the stipulations, and I think that they're extremely important. And I think as I go through this, Your Honor will see that, putting aside very strong law, under the facts of this case, Citi's request for default interest is particularly inequitable.

What you're going to see, Your Honor, is that in

negotiating that final tenth amendment, six weeks before the petition date, Citibank, with considerable leverage at the time, engaged in self-help and obtained terms that handsomely and far more than adequately, indeed, I'd say excessively, compensated it for its involvement in this bankruptcy.

So let me just start with the law. There is -- as it became clear, there's not too much dispute as to the most basic principles. Post-petition interest, as a secured claim, is only allowable under 506(b).

Under the Supreme Court's decision in Ron Pair, which absolutely was not affected by Travelers, the entitlement to interest as part of a secured claim is not a function of contract. The phrase under the agreement does not modify interest in 506(b).

And as the Second Circuit made clear in Key Bank, the interest rate to be applied is a matter for the bankruptcy court's discretion. There's --

THE COURT: Limited discretion. I think the cases --

MR. HOROWITZ: Limited discretion.

THE COURT: -- have talked about limited discretion.

MR. HOROWITZ: And I would also agree, Your Honor --

THE COURT: They've also talked about presumptive use of the contract rate.

MR. HOROWITZ: Exactly. I would also agree, Your Honor, that the courts have routinely stated there is a

rebuttable presumption that the court should adopt the contract rate. And in fact, there are even a couple of cases within this circuit that have said there's a rebuttable presumption in favor of the default rate under the contract.

It's also clear though, Your Honor, under the uniform case law, that that rebuttable presumption is readily and automatically rebutted by the fact of insolvency.

THE COURT: Well, that's the part --

MR. HOROWITZ: Or --

THE COURT: -- where I'm balking, because I haven't read a case yet that says the rebuttable presumption is automatically rebutted in an insolvent debtor case. Have you got a case that says that?

MR. HOROWITZ: No, I don't have a case that says that; I have case -- I have holdings, though, that are uniform, that -- and I should be more clear. It's not the fact of insolvency, I think. I think, properly understood, it is that the presumption is rebutted where default interest would come out of the pockets of general unsecured creditors.

THE COURT: You say that's a black letter rule that the default interest rate will not be applied where it will come out of the pockets of the unsecured creditors?

MR. HOROWITZ: I'm saying --

THE COURT: I haven't seen that said either.

MR. HOROWITZ: I'm saying that's a principle, in my

view, that becomes clear through a review of the case law, and it's also fairly close to explicitly articulated by Judge Sweet in Urban Communications. I'll quote from that in a moment. Well, we cited four cases from courts within this circuit, three bankruptcy court cases. One, Your Honor -- I'll just pause momentarily. The Northwest Airlines case --

THE COURT: Yes, Judge Gropper's case, right.

MR. HOROWITZ: Yes, Judge Gropper's case. That was denying a 61,000-dollar default interest claim in the Northwest Airlines case, so I don't think there was any principle of de minimis impact on unsecured creditors.

THE COURT: Well, I -- you know, four million dollars is not de minimis -- or five million dollars is not de minimis to me. So that isn't going to be --

MR. HOROWITZ: Okay. So I'll pass over that.

THE COURT: -- the basis for my decision, okay?

MR. HOROWITZ: I have not -- thank you, Your Honor, I will pass over that.

In Urban Communications, Your Honor, Judge Gerber -- Judge Sweet reversed Judge Gerber, to the extent that he denied default interest coming out of the pockets of equity, and affirmed, to the extent that he denied default interest coming out of the pockets of equity --

THE COURT: As I say --

MR. HOROWITZ: -- excuse me.

THE COURT: -- I didn't write an opinion, but I have granted default interest in a solvent debtor case where it's coming out of the pockets of equity. So the issue here is what principles -- I think I know what the principles are, but where I'm having a problem, Mr. Horowitz, I don't doubt that the solvency of the debtor recovery by unsecureds is a factor for me to take into consideration in my limited exercise of discretion. What I haven't found is a case that says it's absolutely controlling, that if it's coming out of the hide of the unsecured creditors, you don't give -- and there's no misconduct or anything, you don't give the lender the default rate. I don't -- that may be the result in some cases, but I haven't seen where a judge has said that's determinative, that's controlling.

MR. HOROWITZ: Your Honor, I agree that there is no case that says that that explicitly. What I'm saying is the one case where an insolvent debtor was ordered to pay default interest, the Terry case -- the one reported decision, the Terry case, from the Seventh Circuit, as Mr. Roll acknowledged, there the default interest was coming at the expense of a third lien mortgagee who had expressly contracted and accepted the risk of subordination to the default interest.

So what I'm saying is that I think the principle -- the more accurate principle to recognize is it's inequitable to award default interest at the expense of creditors who have not

voluntarily -- or I should say stakeholders who have not voluntarily assumed the risk.

And getting back to Urban Communications, Judge Gerber had relied on the Supreme Court's -- on Justice Black's language from Vanston, which is still good law, and this was Judge Sweet and Judge Gerber quoting this after Travelers, I'll say. "That it is manifest that the touchstone of each decision on allowance of interest in bankruptcy has been a balance of equities between a creditor and creditor or between creditor and debtor."

What Judge Sweet said is that's right, the balance of equities as between a creditor and an unsecured creditor, in the default interest situation, weighs in favor of the unsecured creditors, therefore affirmed Judge Gerber to that extent. The balance of equities between a creditor, a secured lender --

THE COURT: What was the maturity date of the loans in Urban Communicators?

MR. HOROWITZ: I have to admit I don't have that information.

THE COURT: All right. I may be hitting down the wrong avenue, but I sort of --

MR. HOROWITZ: I will have much to say about that.

THE COURT: -- put out for everybody to think about, does it make a difference whether it's, in effect, a forced --

whether bankruptcy is a forced extension of maturity?

MR. HOROWITZ: And I understand that. And let me turn to that, because I think that's very important and I think this maturity date issue is a bit of a red herring, as you'll see. I agree; maybe there's an extraordinary case where a court would find that it's equitable and appropriate to award default interest at the expense of unsecured creditors. I think Your Honor identified one factor you might find very important is if this amounted to an involuntary forced extension of credit under circumstances where the risk was significantly greater than the secured creditor had, in the first instance, bargained for. That's not -- by the way, I emphasize Citi --

THE COURT: You put an addendum on what I asked that I didn't put.

MR. HOROWITZ: Well, I think that would be an equitable consideration. But first of all, I stress neither we nor Citi has found such a case. I think you made that clear, Your Honor. But this wouldn't be the case, if there were such a case, and I want to identify a couple of reasons why Citi's claim for default interest is particularly inequitable here.

First of all, neither of these two identified defaults is, in any sense, a meaningful or equitable basis for default interest. The bankruptcy event of default is not -- first of all, it's an ipso facto clause. And in other circuits even, Judge Fitzgerald's decision in W.R. Grace actually denied

default interest to secured lenders in a solvent case, finding that the bankruptcy acceleration is an unenforceable ipso facto clause. I understand that's not the law in this circuit, that the courts in this circuit have rejected that. But the fact remains, ipso facto clauses are generally disfavored, and it's not a strong equitable grounds for default.

More fundamentally, and Your Honor certainly touched on this, it's not equitable here because Citi entered into the tenth amendment six weeks before the bankruptcy petition, knowing -- it's in the stipulations, stipulated fact, paragraph 12 -- expressly contemplating that the debtor was in the process of filing a bankruptcy petition. In fact, the amendment negotiated the terms of a cash collateral order. It specified the adequate protection package Citi was to receive.

In anticipation of bankruptcy, Citi extracted a 250-basis-point increase in the base interest rate, from LIBOR plus six to LIBOR plus eight and a half. And it extracted a 3.16-million-dollar extension fee, which I'll have more to say about in a minute. And six weeks before bankruptcy, it obtained a paydown of 124 million dollars, leaving only 154 million outstanding.

I would submit that, under these circumstances, Citi's extension of credit, in knowing anticipation of a bankruptcy, and express negotiation of the terms of those bankruptcy, amounts to a tacit waiver of the bankruptcy event of default,

and at the very least, renders it inequitable for Citi to rely on the bankruptcy event of default as a basis for default interest. And I think Citi knows that, which is why, in its papers and Mr. Roll's argument, it stressed the maturity date.

So let's turn to that maturity date. The facts make it clear, Your Honor, that that maturity date was a complete fiction and a knowing and complete fiction.

THE COURT: Well, sure, once they filed for bankruptcy it's a complete fiction because everybody knows you don't pay -- the loans --

MR. HOROWITZ: Exactly. Not only did they know --

THE COURT: It's not a fiction; it's in the contract and --

MR. HOROWITZ: Okay. But --

THE COURT: But you know you're not going to be paid at maturity.

MR. HOROWITZ: So you enter into an extension saying here's a maturity date that you know not only will the debtor not be able to pay, but the debtor won't pay. Moreover, the extension itself includes provisions that would have been completely meaningless if that maturity date were taken seriously. It included, for example, current interest being paid on the dates contemplated by the credit agreement -- dates, plural, contemplated. So it contemplated ongoing interest payments after the supposed date of maturity. It

included that fees and expenses shall be paid on a monthly basis, obviously well past the date of maturity.

THE COURT: Are you shocked about that?

MR. HOROWITZ: No, I'm not. I think it's obvious and I think it makes clear the point that Citi knew it was extending credit well beyond that maturity date.

It also specified how they would be paid off. It specified that they were going to be paid off from the proceeds of the sale of their collateral, knowing there was this stalking-horse agreement in place, knowing that there was going to be a sale process, and therefore knowing, within a fair degree of certainty, what the time frame for this extension of credit was going to be, as you say, in the event it ended up being from the bankruptcy filing through the payoff date at the end of January, seven months. Did I get that right? Yes, seven months, and nine months from -- more or less, from the date of the extension.

More important -- I shouldn't say more importantly, but more dramatically, Your Honor, I'd ask you to turn to the chart that I handed up. The extension fee, that I referred to, that Citi extracted for this tenth amendment was an amount massively higher than could be justified by a two-month extension of credit. What you'll see here, Your Honor, in this exhibit is -- and this is all using --

THE COURT: Well, you're including it in the extension

to be the paydown part of the principal.

MR. HOROWITZ: No, I'm not. I'll walk through it, but --

THE COURT: Go ahead.

MR. HOROWITZ: The 3.16 million extension fee under amendment 10 is in fact the fee that was paid, not the principal paydown amount.

THE COURT: Okay.

MR. HOROWITZ: And I think Mr. Roll will confirm that if you ask him.

THE COURT: All right.

MR. HOROWITZ: All of this information, Your Honor, is taken from the amendments that are attached to the stipulation.

THE COURT: All right.

MR. HOROWITZ: But what we did is we show on here the effective date of each amendment, the commitment amount that was then outstanding -- it reduced over time -- the new maturity date -- we calculated the number of days with an extension. And you'll see that what happens is in each case Citi gets an extension fee -- it's typical -- and that extension fee is proportional to the length of the extension. It basically amounts to a pre-paid interest, a slug of interest.

So, for example, you'll see that in the amendment 1 there's a fifteen-day maturity extension and a 291,000 dollar

extension fee when you get to amendment 3, four times the maturity extension, slightly lower commitment amount, and you see a significantly higher extension fee. We calculate this out, what is the extension fee in each case as a per -- on an annualized basis, as a percentage of the commitment amount, and it's a round number in every case. Citi was extracting a one-percent annualized extension fee in each of the first five extensions; then I think there was a period of time, if Your Honor may recall, that ResCap seemed a little bit healthier; went down to .75.

Per the short leash, the penultimate -- love using that word -- extension was not a short leash; it was nearly a year. And the amendment number 8 extended from April 2011 through March 30th, 2012, and that was a significant extension fee in terms of dollars, but on an annualized percentage basis was .75 percent.

The extension fee that was extracted on the verge of bankruptcy -- it actually says it in the agreement -- it was calculated as two percent of the commitment amount, so it ends up being 3.16 million.

THE COURT: Okay.

MR. HOROWITZ: If they charged two percent for a one-year extension, that would have been double what they had charged at any point in the future. If they were charging two percent for a sixty-day extension fee, then they were charging

an effective interest rate for that sixty-day extension of credit, of twelve percent. Or put another way, they were charging an effective interest rate for that sixty days, of LIBOR plus eight and a half plus twelve, or LIBOR plus twenty and a half. And I'm not suggesting that that's what Citi did. What Citi did is they did double their typical extension fee, but they did it knowing that, for all intents and purposes, they were agreeing to extend credit for maybe as much as a year, depending on how long the sale process went on.

In the event, Your Honor, they only ended up extending credit, they got paid down nine months later, so -- I should say ten months; I'm sorry. It was ten months. So what you see on the next page is that that 3.16 million amounted to a 2.4 percent interest rate on the 158 million that they loaned for that ten-month period.

So, Your Honor, I would submit that these facts make it clear that that maturity date (a) was a fiction -- they knew they weren't going to be paid -- and (b) that on economic terms, they bargained for and they got compensation for extending credit through the end of the sale process, which is what happened. So I don't think that that nominal May 30th maturity-date default is an equitable basis for extracting default interest.

Moreover, Your Honor, and we already covered this, but the same facts show that Citi was handsomely compensated for

any supposed increased risk that it was being -- that it was assuming by extending the significantly reduced amount of credit into the bankruptcy. It received a large paydown. It received a two and a half percent, 250 basis-point explicit increase in the interest rate. It received, in the form of that extension fee, an additional at least 200 basis points; turns out to be 240 basis-point increase in the interest rate. So its effective interest rate -- and this is shown on the second page -- went from LIBOR plus 6 percent before that final amendment, to LIBOR plus 10.9 percent. That's an increase of almost four -- sorry -- almost five percent, which is significant, more than that four-percent default interest kicked -- that they say they bargained for as compensation for being an involuntary creditor into the bankruptcy.

That LIBOR plus 10.9 percent is significantly more than the debtor was paying on any of its DIP financing, and I raise that, Your Honor, because what's also important to understand is that this bankruptcy did not in any realistic sense increase Citi's risk. The collateral was untouched; it was not primed. In fact, not only did Citi have its collateral untouched on a significantly lower commitment-amount borrowing base; it also received a superpriority claim for the possibility of any diminishing in value. Citi makes a great deal out of the fact that they were putatively exposed to GSC's asserted first-priority claims. The fact is, Your Honor, that

wasn't a change by virtue of the bankruptcy at all. Those superpriority claims existed for the life of the credit agreement and were the subject of express Citibank acknowledgments of the GSC superpriority claims, which Citibank executed in 2007 and 2009; and those are Exhibits 1 and 2 to the stipulation. Not only did those -- that potential risk exist throughout but, by virtue of getting a 124 million dollar paydown, Citibank significantly reduced its exposure to that priority claim.

So the bankruptcy did virtually nothing to affect Citi's status as, as Mr. Roll points out, an oversecured creditor, as recited in the collateral -- sorry -- in the cash collateral order. Throughout the bankruptcy, Citi received interest vastly greater than similarly situated DIP lenders. And in sum, Your Honor, Citi received a large paydown less than two months before the bankruptcy, significant cash extension fee and a great increase, received current interest during the bankruptcy, was paid off less than nine months into the case, was reimbursed in full for its attorney's fees through the date that it was paid off, and indeed for some time past that. The actual -- actually, Citi was paid through April of --

THE COURT: Do you agree that given the existing case law, that Citi has acted in good faith in litigating this issue?

MR. HOROWITZ: Your Honor, that's a closer question in

my mind, obviously. But I would say that under the circumstances I've just recited, Citi's request for default interest here is inequitable and, therefore --

THE COURT: Well, I may determine at the end of the day that it's inequitable, but the issue of whether they're entitled to their legal fees seems to me different. That's why I framed my question differently.

MR. HOROWITZ: And I think -- you know what, I tried to be candid up here. I candidly agree that that is a closer question. I would just submit that --

THE COURT: How much are we talking about on the legal fees?

You were going to look at that, Mr. Roll.

MR. HOROWITZ: Three hundred and -- it's in the stipulation.

MR. ROLL: It is. It is, Your Honor. $351,935.20 --

THE COURT: All right.

MR. ROLL: -- through January of 2014.

MR. HOROWITZ: And that's almost entirely, Your Honor -- I think everyone'll agree -- fees that were incurred in connection with pursuing this motion. And so I think --

MR. ROLL: That's not entirely true, but --

MR. HOROWITZ: Well, I was taking a look at the narrative, and --

THE COURT: Well, let's not --

MR. HOROWITZ: Okay. Okay, well, Your Honor, my view would simply be that since it was under these circumstances -- which I think are really rather extreme, frankly -- it was inequitable to pursue the default interest and, therefore, the fees incurred in that regard should not be allowed. But I agree that that's a closer question, Your Honor.

THE COURT: Okay. Thank you.

MR. HOROWITZ: Thank you, Your Honor.

THE COURT: Mr. Roll, you want to briefly respond?

MR. ROLL: Yes, briefly, Your Honor. And if I may, I'd like to start with that last point. If Mr. Horowitz and his colleagues thought it was inequitable for us to pursue this such that we shouldn't even get our attorney's fees, he should have said that, they should have said that, on day one.

THE COURT: Don't spend any more time on this issue, okay?

MR. ROLL: Okay. With respect to some of the other arguments he made, it's -- there's a lot that could be said about this exhibit. Here's all I will say about that: It's not quite right, as Mr. Horowitz said, that it's taken only from the stipulated facts. He was -- one thing we don't have in the stipulation of facts that would have been pertinent and would be pertinent to the calculation of all these rates is what was actually outstanding at any given time. He was -- he's doing all these calculations on the basis of commitment

amounts. He's drawing inferences -- or making an inference that the thing was fully drawn each time, and it was not, so -- there were a lot of instances where the amount drawn was actually a lot less than the commitment amount. So --

THE COURT: Commitment fees are based on the availability, not on what's actually drawn.

MR. ROLL: I'm sorry?

(Counsel confer)

MR. ROLL: But there were nuances here that we're just not taking into account in that particular stipulation -- in this particular exhibit. That's really the point I'm trying to make.

The other thing too is, every one of these points -- at every one of the points where one of these amendments was negotiated -- and this is the second -- it was a point I made earlier. I don't want to beat a dead horse, but they could have said no. Mr. Horowitz kept saying Citibank did this, Citibank took this, Citibank insisted on this. The fact of the matter is it takes two to tango, in any contract. They agreed. They may have felt that that was -- that they were -- that they didn't want to do it, but they did it nonetheless.

THE COURT: And if we were talking about pre-petition interest, that argument might -- would be persuasive. But we're not talking about pre-petition --

MR. ROLL: We're not.

THE COURT: -- interest.

MR. ROLL: We're not. And it's also interesting that they're sort of tying us to all these agreements and the literal terms, and yet unwilling to recognize the literal terms post-petition with respect to the default rate and the applicability of the default rate.

The other thing worth noting too, and this is standing back a little bit, the numbers -- I mean, he's trying to say that the numbers on here were large, that the fees the bank got were large. None of this changes the analysis of the amount with respect to what we're seeking in post-petition default-rate terms. It's still only five million dollars. It's on the same order of mag --

THE COURT: Well, you were careful to make sure you got the extension fee before they filed for bankruptcy. The money was -- it is high; it was in your pocket.

MR. ROLL: And it was in return for consideration conveyed to the debtors at the time.

THE COURT: Sure.

MR. ROLL: And again, they never sought to change the provision in the underlying agreement, so --

THE COURT: They didn't have to. That's the point. They didn't have to, because the issue is -- for post-petition interest, is different. We acknowledged that.

Okay, I think I have your points, unless there's

something directly responsive to Mr. Horowitz you want to add. We're just kind of treading the same ground.

MR. ROLL: No, Your Honor.

THE COURT: I'm going to take it under submission. Okay?

MR. ROLL: Thank you, Your Honor.

THE COURT: Thank you.

All right, what's next on the calendar?

Anybody who was here on this matter is excused.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

UNIDENTIFIED SPEAKER: Thank you.

UNIDENTIFIED SPEAKER: Thank you.

MR. SCHROCK: Good morning, Your Honor. Ray Schrock of Kirkland & Ellis, on behalf of Ally Financial. I'm here today with my colleague Justin Bernbrock. And I'd also like to introduce the Court to Mr. Robert Ellis with the Dykman (ph.) firm; he is our declarant and, in case the Court has any questions about the underlying action, he certainly is much more facile with certain of the salient facts.

THE COURT: Is there somebody -- who's arguing on the other side? Is there anybody here for the other counterparty?

MR. SCHROCK: Your Honor, it's a pro se matter. He may be --

THE COURT: All right, is anybody on the phone in connection with the Ally motion to enforce the third-party

nondebtor release?

All right, no appearance. Go ahead.

MR. SCHROCK: Okay. Your Honor, I'll be brief. We rest largely on our papers. We think this is a straightforward application of enforcement of the Court's order. We've set forth the salient facts in our -- and allegations, in our motion and the reply. I did want to note for Your Honor that we did contact the other defendants in the action, and they have all consented to -- they don't have an issue with Ally being dismissed from the action.

THE COURT: What's happened? Tell me this: So there was a hear -- did the hearing in the state court go forward?

MR. SCHROCK: It did, Your Honor. The hearing in state court took place -- here, just a -- March 14th.

THE COURT: Right.

MR. SCHROCK: The judge stayed the action as to Ally until a determination was made by this Court, and they also -- the court also denied Lahrman's motion for sanctions against Ally; so that's no longer on the table.

THE COURT: So let me -- the relief you're seeking from me -- because you're seeking an injunction, and typically an injunction has to be under Rule 7001 in an adversary proceeding.

MR. SCHROCK: Yes.

THE COURT: The confirmation order -- or violation of

the confirmation order would ordinarily be enforced by contempt.

MR. SCHROCK: Um-hum.

THE COURT: Could you address whether you can -- whether I could issue an injunction in response to your motion?

MR. SCHROCK: Well, Your Honor, I think the Court always has authority sua sponte to enforce the Court's order. We --

THE COURT: The question is how I enforce it.

MR. SCHROCK: How you enforce it. Your Honor, we actually -- in other cases, I would say in the Southern District, we have brought motions to enforce the plan, the plan injunction, and I've also filed motions for contempt for violating a release. We could have brought -- I admit we could have brought an adversary proceeding and gone down that route for injunctive relief. And I believe, Your Honor, we actually -- addressing that issue, we informally contacted chambers to -- just to query what would be -- if there's any particular preference.

We were trying to keep it, frankly, a little lean and mean, given we had a pro se plaintiff.

THE COURT: Well, it's mean enough.

MR. SCHROCK: Well, Your Honor, we didn't seek costs or anything of that nature. We really have tried to work this out in good faith. We don't have any interest in this

underlying action. We're trying -- we're being sued for something that we don't have any association with; this just deals with the debtors' business.

THE COURT: So just review for me -- and I know you filed some supplemental papers, I think in response to an inquiry from my chambers.

MR. SCHROCK: Um-hum.

THE COURT: I want you to put on -- go through and put on the record the support that Lahrman or his significant other was served with the bar-date notice, with the notice of the confirmation hearing, and that because you've done this by motion -- I think it has to be served in the manner of a summons. This is where a contempt issue comes in.

MR. SCHROCK: Um-hum.

THE COURT: I think I'm correct that -- so I want you to put on the record the evidence -- referring to the evidence that I have before me that Lahrman -- well, with respect to the mortgage on this property, who the mortgagor is or was, because I guess Lahrman is contending that he got a -- I don't know whether it was a quitclaim of a half interest or of a life estate, a transfer of an interest in the property from his significant other, who I gather is the mortgagor.

MR. SCHROCK: Yes.

THE COURT: But I'd like to make sure that if necessary, there's -- I mean, I've read everything that's --

MR. SCHROCK: Yes.

THE COURT: -- before me, but I want you to put on the record -- walk through the trail of paper that you believe supports the Court granting relief, whether it's in the form of an injunction or it's in the form of an order, in the nature of contempt, that basically requires Lahrman to discontinue his action against Ally within a certain number of days and, in the event he fails to do so, would impose appropriate contempt sanctions for failing to do so.

MR. SCHROCK: Certainly, Your Honor. I'd be happy to. And for the record, most of these facts are set forth in Ally's reply, which is filed with the Court at docket number 6661. As we note in our reply, Ally has filed appropriate notice necessary to enforce the Court's order and the confirmation order and the plan in these cases, with regard to Mr. Lahrman. The foundation for Mr. Lahrman's claims is a 2005 mortgage between GMAC Mortgage, LLC and Ms. Cynthia Damron regarding a residence at 3004 Garden Boulevard, Elkhart, Indiana 46517, referred to as "the Property". It's also referred to in Mr. Ellis' declaration, which is filed with the Court at docket number 6621.

Now, according to his complaint, Lahrman and Damron are significant others, are life partners. But it is Damron, not Lahrman, who is the sole borrower and mortgagor under the 2005 mortgage. And accordingly, throughout these Chapter 11

cases, the debtors caused Damron to be served at the property with, among others, notice of the commencement of the cases, the bar-date order, the Court's hearing on the disclosure statement, and the effective date. That could be found in footnote 4 of our reply that's at the affidavit of service for the notice of the cases, at ECF 336; service regarding notice of deadlines or filing proofs of claim is at 1412; the affidavit of service regarding the disclosure statement is at ECF 4285; the affidavit for entry of the confirmation order is at docket number 6187.

Now, accordingly, the debtors caused notice of the confirmation hearing to be published. We also caused notice of the confirmation hearing to be published in the national edition of The Wall Street Journal and USA Today. And I would direct the Court to -- in the record, to ECF number 5025 for the evidence of publication.

Under the circumstances here, Your Honor, and because Lahrman was not known to Ally or the debtors until he filed an action on January 3rd, 2014, specific notice to Damron and publication notice of the confirmation hearing provided sufficient basis, under applicable law, to enter the order.

And since Ally was initially served with the summons in this Indiana State Court, as set forth in the declaration of Robert Ellis at 6621, there were a couple of letters that we sent to Mr. Lahrman, the first indicating there's been an

injunction -- or there's been a plan confirmed, Ally has been released, its January 29th letter, and then a follow-up letter on February 20th.

Interestingly, in these particular cases, again, Ally does not have any interest in the underlying property. We do not have a stake in the outcome. I will state for the record that, as counsel, we have contacted the other defendants in this action, who have all indicated that they do not have an issue with Ally being dismissed from this action and that, in fact, Mr. Lahrman can continue his action and seek whatever relief he deems appropriate against those parties.

But here we're simply, given the fact of Ally being taken to another court for actions where this entire business and this entire -- all of the allegations -- if you look at Mr. Lahrman's complaint, which is attached as Exhibit A to docket number 6621, the entire substance of his allegations relate to -- and although Ally's named in the caption, the allegations go to the debtors' business in servicing the loan at issue. It's just the defined term "Ally" that is used.

And so therefore, Your Honor, in light of the fact that we've contacted counsel -- you know, we are expending fees and coming here before you today -- we'd ask for the Court to enjoin or otherwise issue an order to show cause why, if Ally's not dismissed from the action within a certain period of time, that -- and frankly, I know Mr. Lahrman wants this action to go

forward, and the state court has stayed it pending this Court's decision as to whether or not to dismiss Ally with prejudice. But if any further action --

THE COURT: Well, I --

MR. SCHROCK: -- is --

THE COURT: I'll tell you that I don't believe that I have the power to enter an order dismissing Ally with prejudice in an action pending in state court.

MR. SCHROCK: Yes.

THE COURT: I believe that I do have the power to enter an order requiring Lahrman to dismiss Ally as a defendant in the state court action --

MR. SCHROCK: Or otherwise holding him in contempt.

THE COURT: -- and in failure to -- in his failure to do so, bearing the consequences of disobeying an order of the Court. It'll be for the court in Indiana to decide what, if anything, it's going to do if I enter an order and Lahrman ignores it, in terms of that action.

MR. SCHROCK: Yeah, I agree, Your Honor.

THE COURT: Okay.

MR. SCHROCK: That's correct.

THE COURT: So let me -- I raised the issue before, and I will -- I think it's not entirely clear to me -- Rule 7001, subsection (7) -- an adversary proceeding is governed by the Rules of this part. The following are adversary

proceedings. (7) is a proceeding to obtain an injunction or other equitable relief, except when a Chapter 9, 11, 12 or 13 plan provides further relief. And here the plan does provide further relief.

MR. SCHROCK: Um-hum.

THE COURT: All right. There is a provision that enjoins anyone from seeking to -- disobeying the third-party nondebtor release, in circumstances where it applies.

MR. SCHROCK: Yes, sir. Your Honor, I've done it both ways. We're happy to --

THE COURT: Okay. Just --

MR. SCHROCK: -- proceed how you want to do --

THE COURT: Let me ask this: I want -- because Rule 9020 is the Rule that applies to contempt proceedings, and it requires -- it says 9014 -- Rule 9014 governs a motion for an order of contempt. And 9014(b), Service: The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004. So, just, how was Lahrman served with the motion?

MR. SCHROCK: Your Honor, he was served by special -- frankly, by a special process server --

THE COURT: Okay.

MR. SCHROCK: -- and as well as by mail.

THE COURT: All right. So the process server -- is there an affidavit of service with respect to service of the

motion?

MR. SCHROCK: Your Honor, give me just a moment --

THE COURT: Okay.

MR. SCHROCK: -- please.

Yes, Your Honor. It's -- actually, it's at Exhibit A to our reply.

THE COURT: Okay. And just why don't you just recite to me what it shows.

MR. SCHROCK: It is an affidavit of process server and it shows that on March 1st of 2014 at 9:50 a.m. that the notice of Ally Financial Inc.'s motion for an order enforcing the plan injunction was served on Timothy Lahrman at his home.

THE COURT: It was personal service?

MR. SCHROCK: Yes, it was, Your Honor --

THE COURT: Okay.

MR. SCHROCK: -- personal service.

THE COURT: All right.

MR. SCHROCK: And that is Exhibit A to docket number 6661.

THE COURT: All right.

MR. SCHROCK: So, Your Honor, I think, under those circumstances, we think we've met the requirements to enforce the Court's order.

THE COURT: Okay. Well, the Court grants the motion and will enter an order enjoining Mr. Lahrman from prosecuting

his state court action against Ally Financial. The basis of the Court's ruling is the provisions in the confirmed plan of reorganization, which was not appealed, that both releases Ally from claims that would clearly include the claims that Mr. Lahrman has asserted in his state court action, and also provides a provision for an injunction barring prosecution of those released claims.

"All courts retain the jurisdiction to interpret and enforce their own orders," In re Charter Communications, number 09-11435, 2010 WL 502764, at star 4 (Bankr. S.D.N.Y., Feb. 8, 2010), and it's Judge Peck's decision in Charter Communications enforcing third-party release in the Charter case. And while a bankruptcy court's jurisdiction does not begin to diminish in importance following a plan confirmation, the action in this case is "sufficiently close in time to confirmation of the plan, sufficiently critical to the integrity of the plan structure, that it is proper for this Court to take firm control and decide" the motion. Charter Communications, 2010 WL 502764, at star 4.

As Judge Peck noted in Charter Communications, where a motion seeks to "prevent the prosecution of causes of action expressly prohibited by the confirmation order", it would be "difficult to identify judicial acts that are any more critical to the orderly functioning of the bankruptcy process or more closely tethered to core bankruptcy jurisdiction." Again, it's

the Charter decision at star 4, in citing In re Petrie Retail Inc., 304 F.3d 223, at 230 (2d Cir. 2002), finding a bankruptcy court retained core jurisdiction post-confirmation "to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan of reorganization".

Mr. Schrock has indicated that at a hearing on March 14th, the state court judge in Indiana stayed the action as to Ally pending a decision by this Court. While it would certainly be, I think, proper for both the state court and this Court to interpret and enforce the provisions in the plan, here, as Judge Peck concluded in Charter, the "bankruptcy court is more closely connected to the current dispute and is the proper forum to rule with respect to" enforcement of third-party releases pursuant to the plan. That's Charter, star 3.

I won't quote further from Charter, but Judge Peck carefully examined the factors that go into deciding whether it's appropriate for the bankruptcy court to decide the matter before it of this nature, and I believe it clearly is, in this circumstance.

The 2.1 billion dollar Ally contribution to the successful plan in this case was a significant factor to achieving global resolution and plan confirmation of the debtors' bankruptcy, and a key component of Ally's willingness to provide the contribution was the plan injunction and third-party release. And at the confirmation hearing, I believe I

carefully reviewed on the record the factors that go into considering -- and there were no objections -- by the time of confirmation, there were no objections to the third-party nondebtor release included in the plan. Earlier in the case, the U.S. Trustee, for one, had objected; the JSNs had objected. Those objections were withdrawn. And certainly I think the U.S. Trustee, as always, carefully monitors the inclusion of any third-party nondebtor releases in Chapter 11 plans, and it carefully carried out that role here. So there's no issue that the JSNs withdrew their objection because they got some other consideration for doing so. The U.S. Trustee, I think fairly rigorously, enforces the law with respect to third-party nondebtor releases.

And this Court went through all of the factors under Metromedia, Johns-Manville, in finding that the Court had the jurisdiction to enter the third-party nondebtor release in favor of Ally in that the Metromedia factors, which created a very high burden before a court will grant such relief, were satisfied in this case. And I went through that analysis and carefully considered all those factors in going ahead and granting -- and approving the plan that included the third-party nondebtor release.

Here, having reviewed the state court pleading and the facts as set out in Ally's supporting papers, it strongly appears here that Mr. Lahrman has tried to do an end run around

the fact that the mortgagor was his life partner, Ms. Damron, who, if anyone had a claim, it would have been Ms. Damron. And if he felt he had a claim, he should have filed a claim in this bankruptcy case. Neither he nor Ms. Damron filed a proof of claim in this bankruptcy case, and clearly it's far too late for that to occur. By failing to file claims, any claim would be discharged as a result of the plan. The plan here included very express terms with a third-party release and plan injunction.

Mr. Lahrman didn't file his action against Ally until after the plan was confirmed. Well, I believe he filed it in January -- am I correct -- January 2014?

MR. SCHROCK: Yes, that's correct, Your Honor.

THE COURT: And this plan became effective -- I think it was December 19th or --

MR. SCHROCK: Yes, Your Honor.

THE COURT: -- thereabouts. So it's the brazen disregard of the confirmed plan, confirmation order in this case, that had become effective before Lahrman filed his action in -- so the Court will enter an order enjoining Mr. Lahrman from prosecuting his claims against Ally Financial in the state court action in Indiana.

You need to revise the proposed order.

MR. SCHROCK: Yes.

THE COURT: The order should provide that the Court

gives Mr. Lahrman fourteen days from today -- fourteen calendar days from today to file a dismissal of the action, with prejudice against Ally Financial in the state court action in Indiana. If Lahrman fails to do so, the Court will hold Mr. Lahrman in contempt. I will reserve decision on what contempt sanctions will be applied in the event that Lahrman fails to comply with my order.

Mr. Schrock, provide us with an amended order to the effect that I've just described; it'll get entered. And then I want the order served on Mr. Lahrman in the same manner required by 9014(b). Since he hasn't made an appearance here, I want to be sure that the order should be served in the manner provided for service of a summons and complaint. I'm not sure that that's required, but I want that done here.

If Lahrman fails to comply with the order, you can bring on another motion to enforce this order, with contempt. The contempt sanctions, while not determining the amount, it should include any additional attorney's fees from today on, in bringing on an additional motion. Civil contempt is intended to compel compliance with a lawful order of a court and can include a compensatory award including attorney's fees. So you didn't see attorney's fees for the motion today; I'm not going to permit you to do that. But if you have to go through further action in this court, you can make an appropriate motion to include it.

Have I left anything out?

MR. SCHROCK: I think that covers it, Judge.

THE COURT: Thank you very much, Mr. Schrock.

MR. SCHROCK: Thank you very much.

Your Honor, if I could just address one other --

THE COURT: Yeah, go ahead.

MR. SCHROCK: -- one other matter. We've been trying -- just to keep the Court updated, we're trying very hard not to bring these type of motions, and we've worked out a very good number of them where parties have just voluntarily dismissed the action; of course all the consenting claimants have. We do have a couple of matters where I think we're going to have to bring actions. We're bringing one -- another motion before the Court, and we were notified of one the other day.

Your Honor, we'll take great pain, of course, not to bring these motions unless absolutely necessary. Sometimes we're put under very strict response deadlines. And so I would just ask Your Honor, if we do have to indulge the Court -- and we're going to try very much not to -- there may be an occasion where we have to ask for expedited consideration of a couple of issues. We're trying not to do that, but there's one particular action in Alabama where we have a ten-day response for, to --

THE COURT: I assume you'll order a transcript from today as well.

MR. SCHROCK: Yes, we will. Yes, we will, Judge.

THE COURT: I will -- as with everything that has occurred in the ResCap case, where appropriate I've shortened time and heard things on a short schedule.

MR. SCHROCK: Okay.

THE COURT: Okay.

MR. SCHROCK: Thanks very much, Judge.

THE COURT: Thanks very much --

MR. SCHROCK: Okay.

THE COURT: -- Mr. Schrock.

MR. SCHROCK: Thank you.

THE COURT: Mr. Wishnew, what's next?

MR. WISHNEW: Thank you, Your Honor. Just for the record, Jordan Wishnew, Morrison & Foerster, for the ResCap Borrower Claims Trust.

That brings us, Your Honor, to section 5, the claims objections on today's agenda, on page 8. The first contested matter before Your Honor is item 3 on page 10, the fiftieth omnibus objection. Your Honor, this is something that the debtors put -- I'm sorry -- the borrowers' trust put back on the calendar because, prior to the hearing on the fiftieth omnibus objection, we had reached a settlement with counsel to Ms. Jacqueline Warner; we had documented the settlement, hadn't heard anything. Long story short, we find out that her counsel was released by Ms. Warner, and Ms. Warner believed that she

had a secured claim against us, as opposed to an unsecured claim. We tried to dispel her of that, not to -- we didn't have any success in that regards, and we felt that the matter needed to come back on the calendar, to bring to the Court's attention.

The basis for the debtor -- for --

THE COURT: Let me ask; is Ms. Warner on the phone?

MS. WARNER: Yes. Jacqueline Warner's here, on CourtCall.

THE COURT: Thank you.

Go ahead, Mr. Wishnew.

MR. WISHNEW: Your Honor, the basis for the objection was what we deemed an origination-issues objection, and that was because there was an allegation that Ms. Warner had -- she believed, had validly rescinded her loan. And the fact of the matter is, while she did send notices to cancel her loan, that loan was never cancelled. She never sought to repay the amount to the debtors that was owed under her loan. She simply, in our opinion, tried to unilaterally cancel her loan and say it was discharged. She argues that her obligation to GMAC Mortgage began as servicer. We did not originate this loan. This loan was originated with CMG Mortgage, and the note was assigned to GMAC Bank, which is Ally Bank, a nondebtor entity. GMAC Mortgage only serviced this loan, and has always serviced this loan.

So she then says, well, the loan was -- my obligation was discharged in my Chapter 7. And just to back up and give you a little bit of chronology, Your Honor; Ms. Warner filed a Chapter 13 in the Northern District of California in November 2009. She voluntarily converted that to a Chapter 7 in December 2009. In September 2010, she did receive a discharge; however, her discharge specifically notes that a creditor may have the right to enforce a valid lien, subsume mortgage or security interest against the discharge of the debtors' property after the bankruptcy if the lien was not void or eliminated in the bankruptcy case.

Your Honor if you were to look to the docket of Ms. Warner's bankruptcy case, specific --

THE COURT: Which I did this morning.

MR. WISHNEW: Okay. Thank you, Your Honor. Docket at entry 143 is the Chapter 7 trustee's report, and in that trustee's report he confirms -- or the U.S. Trustee confirms that the real property that's at issue here, in California, was deemed abandoned, per Section 54 --

THE COURT: Where is it? This is in the trustee's final report?

MR. WISHNEW: That's correct, Your --

THE COURT: I have that in front of me. What page?

MR. WISHNEW: Sure, Your Honor. Hold on one minute.

THE COURT: So the trustee's final report --

MR. WISHNEW: It's Form 1, Your Honor, Exhibit 8. It's --

THE COURT: Well -- okay, I don't have the exhibits --

MR. WISHNEW: I can --

THE COURT: -- all the exhibits to it.

MR. WISHNEW: If Your Honor -- I can hand it to you.

THE COURT: Okay, come on up. Oh, I --

All right, what I've been handed is a document, Chapter 7 Trustee's Final Account and Distribution Report Certification that the estate has been fully administered and the application to be discharged; it's filed in case number 09-33436, and it is ECF docket number 143, filed on November 4th, 2010. And Mr. Wishnew has pointed me to Form 1, which is Exhibit 8, and page 1 of that document; it's page 15 of the filed document with the ECF number; page 15 of the filing.

What I had before me actually, Mr. Wishnew, was not this document, but I had the trustee's final report from the case, which is ECF docket number 113 from the same case. But what is it that you say this shows?

MR. WISHNEW: Well, I think the first line of that page, Your Honor, shows that the real property was deemed abandoned back to Ms. Warner. So, essentially the secured claim --

THE COURT: How does -- why does it show that it was abandoned?

MR. WISHNEW: If you look at the far right-hand --
THE COURT: Yes.
MR. WISHNEW: -- column, I believe it says "DA".
THE COURT: It doesn't. It says -- which number is this now you're looking at?
MR. WISHNEW: It should be --
THE COURT: I could give the document back to you.
MR. WISHNEW: Yeah.
THE COURT: It has "FA", fully administered.
MR. WISHNEW: Your Honor, in that report, line 1, there's two relevant columns: there's column 6, which does say it's fully administered, as noted by "FA" --
THE COURT: Yes.
MR. WISHNEW: -- but in column 4 it does say "DA" --
THE COURT: Okay.
MR. WISHNEW: -- deemed abandoned --
THE COURT: All right.
MR. WISHNEW: -- under 54 -- 554(c). So in other words, the Chapter 7 trustee's never administered -- or never actually liquidated the property. It was deemed abandoned back to Ms. Warner. The secured claim remained in place. There's no order of a court, in the Chapter 7 proceeding, in any way invalidating the lien. And subsequently -- and so there is no discharge of the lien. The lien has always remained in place.
THE COURT: Let's back up for a second --

MR. WISHNEW: Sure.

THE COURT: -- because -- Ally filed a proof of claim in the bankruptcy --

MR. WISHNEW: Um-hum.

THE COURT: -- in her bankruptcy, and there was never an objection to the claim, nor did Ms. Warner ever file an adversary proceeding under Rule 7001, subsection -- hang on -- subsection (2) -- let me find the Rule.

Yeah. 7001, subsection (2), a proceeding to determine the validity, priority or extent of a lien. The law basically is, in any event, that a lien rides through bankruptcy unless it's been invalidated. And in support of that, we can look at my decision in In re Wilson, 492 B.R. 691 (Bankr. S.D.N.Y., 2013). The effect of the discharge is to discharge the personal liability but does not affect the lien. And the secured creditor, post-discharge, post-dismissal, of the bankruptcy case, is permitted to enforce its lien. I covered that in the Wilson case.

There's an additional issue here that I want to raise. Well, first off, tell me -- let me find what I'm looking for.

(Pause)

THE COURT: As I understand it, Ms. Warner sold the property in November 2012.

MR. WISHNEW: That's correct, Your Honor.

THE COURT: And she asserts that she was forced to pay

GMAC $1,049,761.96 following the property sale. Who owned the mortgage at that point?

MR. WISHNEW: At that point, Your Honor, the mortgage -- let's see. It was Ally Bank, Your Honor.

THE COURT: All right. So when -- what, GMAC was still servicing the mortgage --

MR. WISHNEW: That --

THE COURT: -- at that time?

MR. WISHNEW: Absolutely correct, Your Honor.

THE COURT: And so the proceeds that were received were paid back to Ally Bank? Is that right?

MR. WISHNEW: Correct, Your Honor.

THE COURT: All right. Do you agree that the personal liability was discharged as a result of the discharge in Ms. Warner's bankruptcy, but the lien rode through and could still be enforced by the mortgagee or the loan servicer?

MR. WISHNEW: Yes, Your Honor.

THE COURT: Okay, and that's what happened here --

MR. WISHNEW: Correct, Your Honor.

THE COURT: -- not through foreclosure, but basically, she couldn't sell the house unless she satisfied the existing lien?

MR. WISHNEW: I believe it actually was through foreclosure, Your Honor.

THE COURT: Okay.

MR. WISHNEW: Foreclosure was started in September of 2012 and then it was sold in November of two thousand --

THE COURT: In a foreclosure sale?

MR. WISHNEW: I believe so, Your Honor; yes.

THE COURT: Ms. Warner, was the house sold in foreclosure, or did you find a buyer for it?

MS. WARNER: The house was not sold in foreclosure, but it was sold under the threat of foreclosure.

THE COURT: Okay. You found a buyer?

MS. WARNER: The house -- I had an agent that did find a buyer --

THE COURT: Okay.

MS. WARNER: -- that was qualified and could buy a home --

THE COURT: Okay. What --

MS. WARNER: -- to avoid the scheduled sale at the auct -- at the courthouse steps on January 9th --

THE COURT: Okay. How --

MS. WARNER: -- 2013, which --

THE COURT: How much did the house sell for?

MS. WARNER: One million -- I think it's 725 --

THE COURT: Okay. In --

MS. WARNER: -- 725,000.

THE COURT: Were you paid the surplus from the sale?

MS. WARNER: Yes.

THE COURT: So the other issue, Mr. Wishnew, that neither you nor Ms. Warner have addressed, she filed her -- filed a Chapter 13 on November 4th, 2009. She served a notice of right to cancel, on November 16, 2009, after the filing of the Chapter 13. She alleges, in the notice of right to cancel that she filed during the Chapter 13 case, that -- and I'm reading from page 2 of three -- "Being as the entire purported loan/mortgage process and deed of trust/security instrument referenced herein and throughout was obtained by wrongful acts of fraud, fraudulent inducement, concealment, and fraudulent misrepresentation, the borrower has other recourse right and cause of action under numerous state and federal statutes." It goes on from there.

Schedules that Ms. Warner filed -- all right, so, filed it as a Chapter 13 on November 4th, 2009. It was converted to a Chapter 7 on December 23, 2009. In looking at the schedules that she filed, she did not list among her assets any claims against Ally or anyone else, for fraud in connection with the mortgage loans that she obtained. Any such claims would have been property of the estate.

So the loan was in 2007, I believe?

MR. WISHNEW: That's correct, Your Honor.

THE COURT: So what she is -- what she was complaining about was fraud in connection with the loan transaction on November 16th, 2007.

MR. WISHNEW: Correct, Your Honor.

THE COURT: She files for bankruptcy in 2009. If she had any claims for fraud, those claims would have been property of the estate in her Chapter 13 and upon conversion to Chapter 7, in particular because the fraud allegedly occurred before she filed the bankruptcy petition at all.

MR. WISHNEW: Agree, Your Honor.

THE COURT: And so I don't know how she has standing to assert any claims in this bankruptcy, because the claims -- she didn't schedule it, but there are consequences in failing -- if you think you have a claim, in failing to schedule it. So she did, in the bankruptcy, file a copy of this notice of right to cancel.

Cover for me, if you will, Mr. Wishnew -- as I understand it, there's a split in authority -- who has the burden of bringing an action -- if a lender won't acknowledge a rescission, who has the burden of bringing an action to force a rescission.

MR. WISHNEW: It should be the borrower that brings the action for rescission; but again, it's against the lender as opposed to --

THE COURT: Right.

MR. WISHNEW: -- the servicer. And here, GMAC Mortgage was only acting in its capacity as a servicer. And so any sort of action for rescission under the Truth in Lending

Act is properly against a nondebtor entity, which really goes to the heart of our objection here is that any sort of rescission-related claim or anything deriving from that claim isn't assertible against GMAC Mortgage or its debtor affiliates.

THE COURT: All right, anything else you want to add?

MR. WISHNEW: That's it, Your Honor.

THE COURT: Okay. Ms. Warner, go ahead.

MS. WARNER: Okay. Thank you. First off, in regards to the bankruptcy, I just want to disclose that I really should not have been in bankruptcy. I went pro se originally; made a mistake. I then hired a bankruptcy attorney. And in response to your comment of there was no claim against Ally for fraud in my bankruptcy, I relied upon -- on my attorney at that time, to tell me that I -- this is something I had not heard until just now. So I didn't know that that was -- I think you said Rule 7001 --

THE COURT: Well, 7001 --

MS. WARNER: -- subsection (2).

THE COURT: Wait. Let me just say, 7001-2 (sic) deals with trying to invalidate a lien.

MS. WARNER: Okay. That doesn't deal with whether -- if you had a claim for fraud against Ally or the other parties that were involved in granting you the loan. So I just want to be -- I'm not giving you legal advice but, just to be clear --

MS. WARNER: Yeah.

THE COURT: -- I wasn't suggesting that you had to bring an adversary proceeding under 7001, subsection 2, to assert a fraud claim against anybody.

MS. WARNER: Okay.

THE COURT: The 7001 --

MS. WARNER: Thank you for the clarification.

THE COURT: Okay. That deals with invalidating the lien.

Go ahead.

MS. WARNER: Okay. So my first point is that I didn't make a claim against Ally for fraud, because I was not advised by my attorney, at the time, to do so, because I realized that I had gotten myself into bankruptcy -- I was solvent. And I -- they would not let me out. So I was stuck in bankruptcy.

I got an attorney; he knew my case, he knew my claim about the fraud, he knew all my rental properties were in foreclosure. He knew the whole story. He said that he would help me, and then he proceeded to not. So I was really, I don't know, undermined, disarmed, to not do that. Number one.

In terms of the -- well, there's a lot I can say here. In terms of your question, the burden of action to force the rescission, which is off topic from the bankruptcy. Sorry.

THE COURT: It's not off topic. I mean that's -- you need to address it.

MS. WARNER: You know, everything that I've read, and, again, I'm pro se, and I just tried to learn as much as I can the old-fashioned way, by reading things over and over. Nothing in the rescission laws say that the borrower has the burden of action to force the rescission. Everything I read is contrary to that and says step one is notice. Step two, then the lender can do and respond within twenty days and make the deed of trust unsecured and go through it that way. I've never seen that, so this is the question I had, and I'd like to see more information where it points specifically to that, because I could not find who has the burden of proof to force the rescission. That's, you know, one of my observations in this conversation here.

THE COURT: Well, let me ask you this.

MS. WARNER: The other thing -- the other thing that comes up is the nondebtor entity. My first notice of rescission was done on June 29, 2009, which is prior to my bankruptcy, and which is what I'm really relying upon in this situation, because I notified Ally Bank, CMG Mortgage, LLC -- C-M-G Mortgage, and including the title company, First American Title, and I let everybody know.

The next event after I get no response --

THE COURT: Let me just stop you for a second. What's the date, because the earliest one I saw was November 16, 2009? You say there was a June, 2009?

MS. WARNER: Oh. It was in June 29, 2009. So it's previous to the November.

THE COURT: Okay. That I haven't seen.

MS. WARNER: Okay. It's in one of my attachments. I don't know which offhand. I'll get that in a minute, but my point is bankruptcy aside, it was a major mistake for me. I understand that the trustee abandoned my claim. My perception on that is that she abandoned it because she knew that I had done the rescission previous --

THE COURT: She didn't --

MS. WARNER: -- and didn't want to step on that --

THE COURT: She didn't --

MS. WARNER: -- so she just --

THE COURT: She didn't --

MS. WARNER: -- let it go.

THE COURT: She didn't abandon your claim. I mean, you never scheduled your claim. You scheduled the property, and the trustee abandoned the property. The trustee couldn't abandon the claim, because you didn't schedule the claim.

MS. WARNER: And I didn't schedule it because I didn't know I was supposed to, and I had an attorney that didn't tell me that.

THE COURT: Let me ask you this. And I think this is, sort of, at the heart of Mr. Wishnew's objection, is if you had a rescission claim to assert it was against Ally Bank, not

against the loan servicer. The loan servicer didn't put you into the loan. You were trying to rescind the loan on the basis of fraud. GMAC was servicing the loan. Why do you think you have a claim against the debtor, any of the debtors in this case, based on rescission? Whether you had a good rescission claim against Ally Bank or not, what do you think gives you a claim for money against GMAC?

MS. WARNER: Because GMAC filed a claim in my bankruptcy --

THE COURT: Nor Ally --

MS. WARNER: -- to the --

THE COURT: I looked. And the schedule lists the creditor. Let me find it. I've got it in my pile of things. Bear with me a second.

(Pause)

THE COURT: The claims register lists claim number 5 as Ally Bank, formerly known as GMAC Bank, and it lists a secured claim in the amount of $990,742.62. GMAC Bank, which is now known as Ally Bank, is not a debtor in this bankruptcy case. Never been in this case. So that's who filed the claim. GMAC Mortgage, who serviced the loan, never filed a claim in your bankruptcy case. Ally Bank, which held the note, that's who filed the claim.

So what is it that you think gives you -- and I understand that you believed you were entitled to rescission of

the loan. What is it that you think gives you a claim against GMAC Mortgage -- which was the loan servicer, not the lender -- and it is a debtor in this case or was a debtor in this case?

MS. WARNER: Because I had notified the attorney that filed claim number 5 that you just mentioned, and I notified her also of my notice of right to cancel, which you saw the letter, and that was done approximately a month after the one that you referred to. It was done in December of 2009. And I went, based on the B10, that she worked for GMAC, who also represented and worked for, was affiliated with Ally Bank. So I went with the fact that notice to agent is also notice to all of the other parties. Especially being an attorney she obviously would know all the parties.

THE COURT: No. Well, whether notice was appropriate or not really isn't the issue I'm focused on. It's whether you have a -- because the issue here is you filed claims in this bankruptcy case. And the issue is do you have -- and they've moved to expunge the claim. So the issue is do you have a claim against the debtors, not because you served a notice on them because you say they were an agent for Ally Bank.

MS. WARNER: They took the money.

THE COURT: Well, they took the money and paid it back to Ally Bank, which was -- they were the servicer. So the servicer collects the money and forwards it on to the lender to repay the loan.

MS. WARNER: Can I respond to that?

THE COURT: Yes. Go ahead.

MS. WARNER: In reading over the servicing agreement that GMAC agreed to with -- let's see. Let me find my -- okay. Right here. The servicing agreement filed with the sec.gov dated October 26, 2007, GMAC Mortgage, LLC, as servicer, GMACM Home Equity Loan Trust 2007-HE3, as issuer, and Bank of New York Trust Company, N.A., as indenture trustee. It says under Article III, "Administration and Servicing of Mortgage Loans", Section 3.01, "The Servicer", (a).

For the sake of time I'm going to just skip to the middle of the paragraph --

THE COURT: Yes. Go ahead.

MS. WARNER: -- if that's okay with you. Your Honor's --

THE COURT: Sure. Go ahead.

MS. WARNER: Is that okay?

THE COURT: Yes. Go ahead.

MS. WARNER: Okay. "Without limiting the generality of the foregoing, the servicer shall continue, and he is (sic) authorized and empowered by the issuer and the indenture trustee, as pledges of the Mortgage Loans, to execute satisfaction or cancellation, or of partial or full release or discharge and all other comparable instruments with respect to the mortgage loans and the mortgaged properties."

So they had the power to do this. They had the power to administer any discharge if they wanted to or satisfaction if they wanted to. But also it says, and I can't find it right now, but they were entitled -- the agreement between these parties says that GMAC is entitled to Foreclosure Profits, meaning capital F and capital P, which to me seems a little contradictory, because everything I hear about foreclosure, there's a loss of money, not a gain of money. There's certainly no profits on the table. So I really have to question who got to keep the money, based on the servicing agreement, Article III.

THE COURT: Okay. Anything else you want to add?

MS. WARNER: At this particular point not for this. There's other things I can say --

THE COURT: Go ahead.

MS. WARNER: -- of course, whenever the time's right.

THE COURT: No. The time is right. Go ahead.

MS. WARNER: Okay. Well, I want to back up to June 29, 2009. Apparently you did not get a copy of the exhibit.

THE COURT: I may. It may be in -- look, there's a lot of paper here that I tried to dig through and find so -- but go ahead.

MS. WARNER: Okay. My claim in -- my claim, based on that rescission, all four parties were notified. Nobody responded. It was a default on their part. And now it seems

like everybody wants to go back in time to four plus years and say oh, you know, we disagree. Where was everybody then? I really would like to have had that conversation back then. It would have changed my life dramatically. For the better or the worse, it still would have been better, because at least I could have resolved the issue.

Now, I state -- and my claim, you say that they're a nondebtor entity. Well, okay. Let's not go there. Sorry.

My claim is based on that letter that it was an unsecured deed of trust. When I had a independent party, and I didn't get any response, and I thought that that was -- that they were in default, and it was automatically unsecured. That's what I read in the laws, specifically the ones that we've been talking about, the 226s.

If they choose not to take any action, and Ally was notified. This is crucial. It's not like they were left out of the loop. I then get a B10 filed on me, claim number 5, by Pite Duncan, the law firm, and it's an attorney that represents Ally Bank -- GMAC Bank, Ally Bank, and GMAC. To me --

THE COURT: No, let's not -- just stop.

MS. WARNER: -- it's all the same parties.

THE COURT: Wait. Just stop for a second, okay? And this may be confusing, but Ally Bank used to be known as GMAC Bank, okay?

MS. WARNER: Correct.

THE COURT: GMAC Mortgage is a different company. It's the loan servicer. GMAC Mortgage is before me in the bankruptcy case, okay? Ally Bank, or formerly known as GMAC Bank, has never been in this bankruptcy case. So the fact that it used to be called GMAC Bank doesn't mean it's the same as any of the entities here. It's not.

MS. WARNER: Okay.

THE COURT: I just want to make that clear. But go ahead.

MS. WARNER: GMAC has possession of the funds. I have no way of knowing where they really went, and I'd like them to have more proof of where it did go, because based on reading the servicing agreement it contradicts what I just heard, that they cast it on to Ally. I'd like to see evidence of that.

From what I can read, or understand from reading the servicing agreement, GMAC Mortgage, LLC is an affiliate of GMAC Bank, now Ally Bank.

THE COURT: It's not.

MS. WARNER: And they have permission to keep the profits, which I don't know what those profits are, but it could be anywheres from zero to the whole entire dollar amount collected. I'd like to know what that number is.

THE COURT: Well, you indicated that you got paid back the surplus. The amount of the mortgage was subtracted from the sale proceeds, and you got the balance. Right?

MS. WARNER: Well, you know, that's somewhat true. I'd like to add, and I didn't bring this up before, because I just felt it was -- there's just too much information going on here. I was overcharged by GMAC in the escrow by somewhere around twenty some thousand dollars.

THE COURT: Look, that's not in your claim.

MS. WARNER: I know.

THE COURT: And I can't -- I'm not dealing with it.

MS. WARNER: Okay.

THE COURT: I'm dealing with your proof of claim, okay?

MS. WARNER: Okay.

THE COURT: Mr. Wishnew, do you have anything that shows that the proceeds from -- that the mortgage amount that came out of the proceeds of sale was repaid to Ally Bank?

MR. WISHNEW: Not with me in court today, Your Honor, but I'm sure I can go back to servicing records and try and track that down.

THE COURT: Okay. Could you send a copy to Ms. Warner?

MR. WISHNEW: Sure.

THE COURT: And me.

MR. WISHNEW: Sure.

THE COURT: Okay. All right. Anything else, Ms. Warner?

MS. WARNER: One second here. Well, I guess I want to ask why didn't Ally respond to my letter and just say hey, get out of here or whatever. But there was just no response. Why didn't anybody talk to me?

THE COURT: That I can't tell you, and Ally Bank has never been a party in my case.

MS. WARNER: But what is one supposed to assume or proceed on when there's no response? It's a default, is it not?

THE COURT: So your bankruptcy case was in the Northern District of California, which is in the Ninth Circuit. And in a case called Yamamoto v. Bank of New York, 329 F.3d 1167, 1170 (9th Cir. 2003) the Ninth Circuit rejected the argument that a letter of rescission had the automatic and immediate effect of voiding a loan transaction.

I know that's the position you assert, but in California, where you asserted it, where the property was and where you asserted the claim, the rule in the Ninth Circuit is that it's not -- the letter of rescission does not have the automatic effect of voiding a loan transaction.

MS. WARNER: So is this a circumvention around TILA?

THE COURT: No. The Ninth Circuit interpreted what's required.

All right. Anything else you want to argue now?

MS. WARNER: I had a thought and I just lost it.

THE COURT: All right. I'm going to take the matter under submission, Mr. Wishnew, and I'll --

MS. WARNER: I'm sorry?

THE COURT: I'm going to take -- I'm not deciding it from the bench, Ms. Warner. I'm going to enter a written decision order, okay, resolving the issues.

MS. WARNER: Okay. Yeah, I understand.

THE COURT: Thank you very much.

MS. WARNER: Can I provide you with the one documents (sic) that you didn't have?

THE COURT: I'm not sure that it's going to add anything. It just makes it clear that before you filed -- I'll accept your representation that before you filed your Chapter 7 case you sent a notice of rescission to the lenders. That's what you're telling me. You sent it in June of 2009. You filed your bankruptcy in November of 2009. Do I have that right?

MS. WARNER: That's correct.

THE COURT: Okay. Okay. All right. I'm going to take the matter under submission. Thank you very much. Thank you very much, Ms. Warner.

MS. WARNER: Your Honor, thank you for having me. Okay?

THE COURT: Okay.

MS. WARNER: I do mean it.

THE COURT: All right. Okay.

MS. WARNER: Thank you.

THE COURT: All right. All right.

MR. WISHNEW: Thank you. Thank you.

THE COURT: Let's move on.

MS. WISHNEW: Yes.

THE COURT: Try to finish the agenda.

MR. WISHNEW: Next matter before Your Honor is matter 6 on page 13 of today's agenda, the Borrower Trust's fifty-eighth omnibus objection to amended and superseded borrower claims, late-filed borrower claims, and nondebtor borrower claims.

Your Honor, through this omnibus objection the Borrower Trust seeks to expunge a total of fifteen claims on the aforementioned three bases. In support of the objection the Borrower Trust submitted two declarations, one by Ms. Horst, chief claims officer of the ResCap Liquidating Trust, and the other by Mr. Morrow of the Kurtzman Carson firm. Ms. Horst is here today to answer any questions Your Honor may have.

There were two responses with regards to this omnibus objection, Your Honor. One was filed by Mr. Olszewski at docket number 6615. After reviewing the response on March 19th the Trust withdrew its objection to Mr. Olszewski's claims, claim number 7163 and 7172, and recognized that there was an

error that invalidated its basis to object to the claims as being late-filed and reserved its right to object to the claims on a different substantive basis in the future. That notice of withdrawal was at docket entry 6670.

I'll also add for the record that on March 12th the Borrower Trust did send Mr. Olszewski a letter seeking information from him related to all of his claims. He has filed a number of amended claims that have gradually increased the assert amount against the debtors' estates and the Borrower Trust, and so we have asked for him to substantiate those claims. In that same information request letter we also advised him that we are withdrawing the late-filed objection in order -- so we can understand the rationale for our liability to him.

So in that regard we are not proceeding with the objection as to Mr. Olszewski's claims. His claims will not be reflected on any order the Court enters.

And so that would bring me to the second objection, which is that of Mr. Leroy Hines. This is --

MR. OLSZEWSKI: May I interject, please?

THE COURT: Are you Mr. Hines?

MR. OLSZEWSKI: No, I'm Mr. Olszewski, sir.

THE COURT: Oh, okay. Go ahead. Yes. Let me hear what you have to say.

MR. OLSZEWSKI: Well, first of all, we're in estoppel.

We're in now -- there is no disagreement. They have agreed that I did have a secured file. They've agreed that they would not go into litigation. They agreed that in estoppel because I sent an affidavit, and I do believe that the fax I did send to you of different amendments inclusive, I did send amendments, and I did do those in the form of affidavits. And so I don't know why there is any kind of conflict at all.

THE COURT: Well, what Mr. Wishnew was telling me is they've withdrawn the -- I think it's in the fifty-eighth omnibus objection.

MR. WISHNEW: Yes, Your Honor.

MR. OLSZEWSKI: I understand.

THE COURT: Just stop. Stop, Mr. Olszewski

MR. OLSZEWSKI: But where I'm coming from is --

THE COURT: Mr. Olszewski, just stop. Okay.

MR. OLSZEWSKI: I'm sorry.

THE COURT: That -- having withdrawn that objection, it's still without prejudice. They still have time, and they're going to evaluate your claim and see whether there's any other basis for an objection. This doesn't preclude them from doing that.

MR. OLSZEWSKI: I understand, sir.

THE COURT: Okay.

MR. OLSZEWSKI: But what I'm saying is that I have shown them already that it is a secured claim. I've given that

in the form of an affidavit. And my belief was that an un-rebutted affidavit becomes true.

THE COURT: Well, Mr. --

MR. OLSZEWSKI: And an un-rebutted affidavit is acting as a judgment in commerce.

THE COURT: It's not. Mr. Olszewski --

MR. OLSZEWSKI: And so I don't understand what they're asking for that I haven't given them.

THE COURT: Mr. Olszewski, we'll see whether they come back with an objection to your claim or whether the matter is resolved. You ought to continue to discuss it with them, and hopefully it'll get resolved and won't come back on the court's docket. So this --

MR. OLSZEWSKI: Okay.

THE COURT: Okay? All right?

MR. OLSZEWSKI: And all I'm asking, Your Honor, sir, is to just look at the facts --

THE COURT: Mr. Olszewski.

MR. OLSZEWSKI: -- and --

THE COURT: If they don't come back --

MR. OLSZEWSKI: -- and make conclusions of law based on the facts.

THE COURT: Mr. Olszewski, if they don't --

MR. OLSZEWSKI: Yes, sir?

THE COURT: -- come back with an objection to your

claim it's never going to come back to me. If they don't object to it the claim is going to be allowed. They've got a certain amount of time to object. They're reviewing the additional materials that you've provided them. And we'll see whether --

MR. OLSZEWSKI: But they haven't asked me for -- they haven't asked me formally for anything new --

THE COURT: Okay.

MR. OLSZEWSKI: -- from anyone that I talked to.

THE COURT: All right. Well, what's the status --

MR. OLSZEWSKI: In other words, they haven't responded to any of the affidavits that I've sent to them in affidavit form.

THE COURT: What's the status, Mr. Wishnew?

MR. WISHNEW: The status at this point, Your Honor, is that a letter was sent to Mr. Olszewski on March 12th asking for information about his most recent claim in the amount of twenty million dollars and understanding why, first, we have liability to him in the amount of two million dollars, and then why that should be, I guess, multiplied by ten, as he asserts. When we receive that information we will evaluate that, and if we disagree with his legal bases for that liability we will bring an objection before the Court.

THE COURT: Okay. The matter is -- the objection to Mr. Olszewski's claim has been withdrawn for today, and we'll

see whether it comes back again.

Thank you, Mr. Olszewski.

Go ahead, Mr. Wishnew.

MR. WISHNEW: Thank you, Your Honor. That brings us to the response filed by Mr. Hines, claim number 7312. I'm not sure if Mr. Hines is appearing telephonically.

THE COURT: Mr. Hines, are you on the phone?

Go ahead.

MR. WISHNEW: Thank you, Your Honor. This was a claim filed against Residential Capital, LLC for $38,789.36 for the secured claim and 2,600 dollars as a priority claim based on a "mortgage note". The claim was filed on November 20, 2013, approximately one year after the bar date.

THE COURT: All right. I have this matter. I'll take it under submission and enter an order. This is an issue about a late-filed claim.

MR. WISHNEW: That's correct, Your Honor.

THE COURT: Okay. It'll be resolved in an order, since Mr. Hines is not on the phone.

MR. WISHNEW: Fair enough, Your Honor. That brings us to the next matter, which is the fifty-ninth omnibus objection to insufficient documentation borrower claims. There were two late-filed replies to this matter. Those were identified on yesterday afternoon's agenda and are being carried to the April 24th hearing. The Borrower Trust is hoping to try and resolve

the matters consensually. If not, then we'll bring them before Your Honor at the --

THE COURT: That's Trammell and Holiday?

MR. WISHNEW: Correct, Your Honor. Yes.

THE COURT: All right.

MR. WISHNEW: Putting aside those two claims, this omnibus objection sought to expunge eighteen claims that the Borrower Trust asserts failed to provide sufficient documentation in support of the borrowers' respective claims.

In each instance the debtors and the Borrower Trust sought additional information from these claimants, and a number of borrowers failed to return any response, and if any responses were received, such responses were deficient.

With regards to -- I know, in speaking with Your Honor's chambers, there were certain questions as to particular claimants, and I'm happy to address those, if you'd like, for the record.

THE COURT: Go ahead.

MR. WISHNEW: Thank you, Your Honor. Let me just say that in response to inquiries from chambers we did withdraw the objection as to Ruth Hutchins, claim 5602. That withdrawal was docketed at docket number 6670.

So there are three claims that I will briefly address: claim 731 filed by Louise Budelis, claim 913 by Ronald Gillis, and claim 5763 by Ms. Hanover. For each of these claims, it is

the Borrower Trust's position that the debtors took great efforts to obtain additional information from these borrowers and diligently reviewed their records and claims analyses and did not find any tangible connection between these individuals and the debtor entities.

Claim 731 by Ms. Budelis, filed against GMACM/ResCap as a priority claim in the amount of nineteen dollars on account of alleged "Ground rent for 4217 Grace Court, Baltimore, Maryland". The proof of claim attached to the deed, dated July 7, 2011, signed by the special administrator of the estate of William R. Noeth, bequeathing to Ms. Budelis a fee simple interest in a number of property lots.

The borrower provides no explanation for the basis of the claim. The debtors sent a request letter to Ms. Budelis on June 21, 2013 requesting additional information in support of her claim, including a request that the borrower provide the loan number that relates to her claim. We did not receive any response to that request letter.

THE COURT: Did you search your records to see whether there was any --

MR. WISHNEW: That's exactly --

THE COURT: -- loan --

MR. WISHNEW: That was the next step I was going to, Your Honor.

THE COURT: Okay. Go ahead.

MR. WISHNEW: Based on a thorough search of our books and servicing records we have no record relating to this borrower or address.

THE COURT: All right. Objection to the claim is sustained.

MR. WISHNEW: Thank you, Your Honor. Claim number 913 filed by Mr. Gillis, which amended claim 444. This was filed against Residential Capital as a general unsecured claim in the amount of $290,859.68 on account of alleged slander to property title.

The proof of claim only attaches a foreclosure action that Wells Fargo was handling as a servicer. RFC was a master servicer, and Deutsche Bank was investor and plaintiff in the foreclosure action. The borrower alleges slander to property title that occurred in 2009, when Deutsche Bank omitted (sic) the caption on a foreclosure action pending in Charlotte County. The borrower appears to take an issue with Deutsche Bank's addition of the language "for GMAC-RFC master servicing".

We sent a borrower request letter to Mr. Gillis on June 21, 2013. He did not respond to our request letter. Again, we went through our books and records, looked into the claims, and there was no information, and we were not aware of any pending litigation against us, any debtor entity.

THE COURT: Well, was GMAC servicing the loan?

MR. WISHNEW: As a master servicer, Your Honor. Wells Fargo was the subservicer.

THE COURT: The subservicer.

MR. WISHNEW: Correct, Your Honor. So the debtors had no involvement in the day-to-day servicing of Mr. Gillis's loan, and we're neither the investor nor owner but merely the master servicer for the securitization. Therefore it's unclear how Mr. Gillis is damaged by the fact that the master servicer language was added to the caption of his foreclosure action, and to date he's offered no explanation or basis for his damages.

THE COURT: All right. Objection sustained.

MR. WISHNEW: Thank you, Your Honor. Lastly, claim 5763 filed by Ms. Hanover. The claim was filed against Residential Capital, though it looks to be against GMAC Mortgage, as a general unsecured claim in the amount of 25,000 dollars. The only color we have are the two paragraphs she puts into her claim where she says GMAC, and she doesn't identify this GMAC Bank, GMAC Mortgage, GMAC brought an action against Ms. Hanover in the Court of Common Pleas for Montgomery County and claimed an ownership in her loan. She's expecting, and I emphasize the word expecting, a foreclosure action will commence shortly.

Her proof of claim asserts potential, and again, I emphasize potential, counterclaims against the debtors. Aside

from this statement there is no other information or supporting documentation included with the proof of claim.

THE COURT: Did you check your records to see whether --

MR. WISHNEW: Exactly, Your Honor.

THE COURT: -- any of the debtors were either the --

MR. WISHNEW: We sent her a --

THE COURT: -- the lender or the loan servicer?

MR. WISHNEW: We sent a request letter on November 13th. There was no response. We reviewed our books and servicing records, and we were unable to connect Ms. Hanover to any properties in Montgomery County, Ohio.

THE COURT: Objection is sustained.

MR. WISHNEW: Thank you, Your Honor. So that brings us to the conclusion of the fifty-ninth. We will submit orders consistent with these rulings.

THE COURT: All right. So any of those that I didn't ask be raised at this, which is no response, I'm sustaining the objection.

MR. WISHNEW: Thank you very much, Your Honor.

That brings us to the last matter on today's agenda, which is matter 8 on page 14, the sixtieth omnibus objection, which deals with res judicata borrower claims. There was one response received, Your Honor, from Ms. Randle, and basically, Your Honor, by this omnibus objection the Borrower Trust seeks

to expunge eight borrower proofs of claim relating to matters that were previously litigated and decided by a final judgment in the debtors' favor, and each of which meet the elements of res judicata and should be barred by that doctrine.

The only response we've received is from Ms. Randle. She had two claims at issue. One was claim 4133 against GMAC Mortgage and claim 4199 against Residential Funding Company, each in the amount of 234,200 dollars.

THE COURT: Ms. Randle, are you on the phone?

Go ahead.

MR. WISHNEW: Okay. For the sake of completeness, Your Honor, I want to make sure that the Court's aware, minutes before the start of this hearing Mr. Rosenbaum did receive an e-mail request from Ms. Randle seeking leave to file a surreply, because she had received our reply and wanted to make additional arguments. Again, Ms. Randle is not on the phone today.

I will say the following. Ms. Randle asserts that this action -- that our basis of res judicata is invalid because of actions that occurred subsequent to the judgments. But the fact of the matter is, Your Honor, there's a claim against GMAC Mortgage for wrongful foreclosure. There's a claim against RFC for wrongful title. There was an exhaustive foreclosure action with GMAC Mortgage in Massachusetts. We obtained a final judgment in both our affirmative action and

her affirmative action. We obtained a ruling, attached to our reply, that says we had the right to pursue the foreclosure.

THE COURT: Yes. I would question whether it's appropriate to refer to it as an exhaustive foreclosure action, because Massachusetts is a nonjudicial foreclosure state. I read the Court's opinion yesterday from the Massachusetts Land Court, and I guess GMAC had filed an action against Randle seeking a declaratory judgment that she wasn't entitled to relief under the Servicemen's Act. And then she filed an action against GMAC, and, I think, others.

And in the Court's opinion and its judgment it refers to two forms of relief that Ms. Randle sought. First she asked for a determination that GMAC had no security interest in the property. And she sought to prevent foreclosure on that basis. Secondly, she sought a determination that GMAC didn't have standing to assert the Service -- seeking relief under the Servicemen's Act.

In granting summary judgment, most of the opinion was focused on the Servicemen's Act claim. My paraphrase of it, it didn't really matter whether GMAC had standing to bring it. Standing on that isn't quite the same as standing on foreclosure. In any event, Ms. Randle acknowledged she wasn't entitled to relief on the Servicemen's Act issue.

Less time is spent in this -- less words in this opinion dealing with the issue of whether GMAC has a security

interest entitling it to foreclosure. The judgment specifically identifies the two issues, namely Servicemen's Act and does it have an interest in the property, in the mortgage, and grants judgment on all claims. So it grants judgment on the -- it's not the most crystal clear opinion I've ever read, but it does do that.

So there's some history here that I do want you to briefly address.

The debtors' fiftieth omnibus objection had sought to expunge Ms. Randle's claim, essentially, on a books and records basis. That was withdrawn, and what I have before me now is ResCap Borrower Claims Trust's sixtieth omnibus objection to claims res judicata borrower claims. That objection is at ECF 6457. Ms. Randle filed a response to that, which is at ECF 6665. 6665. The debtor filed a reply, which is at 6678.

Ms. Randle, in her response to the objection, which is fairly short, does not repeat the same objections that she had included in her response to the fiftieth omnibus objection. But she basically argues that res judicata doesn't apply, because she's challenging things that happened after the judgment from the land court. What was very confusing to me is that she said twice in there, both with respect to the GMAC claim and the RFC claim, that she was seeking damages that resulted from the fact that foreclosure didn't take place for more than a year after the judgment of the land court. She

cited a section of Massachusetts general law. I don't remember the section number that we looked at.

I was concerned that there was some provision in Massachusetts law that effectively created a staleness argument that if you get a judgment and then you don't do anything about it for more than a year you can't enforce it, but I didn't find anything like that. Is there anything like that?

MR. WISHNEW: Not that I'm specifically aware of, but I think Ms. Randle's -- I think Your Honor's picked up on some confusion, and let me clarify that.

So we got the judgment in October, 2010.

THE COURT: She then sought reconsideration.

MR. WISHNEW: That's correct, Your Honor.

THE COURT: And the reconsideration was denied when?

MR. WISHNEW: The reconsideration was denied, I believe, in September. Either August or September of 2011. And, yes, so --

THE COURT: So it was less than a year. The foreclosure was completed less than a year after the Court denied reconsideration.

MR. WISHNEW: That's exactly -- the time gap is because of the reconsideration. So she filed the motion for reconsideration after the 2010 judgment. It was denied by the Massachusetts Land Court on August 25, 2011. She then had thirty days to appeal that. Again, the appeal would have been

timely if filed by September 26, 2011.

THE COURT: Well, she did appeal. Didn't she appeal? What did she -- she claims res judicata doesn't apply because she has an appeal pending. What did she appeal?

MR. WISHNEW: She, I think, appealed the reconsideration decision. But the fact of the matter is --

THE COURT: You're saying it was untimely.

MR. WISHNEW: I'm saying it was untimely. It was filed after the expiration of the statutory thirty days.

THE COURT: Well, in any event, Massachusetts law, as the Court has -- wait a second.

Massachusetts State Courts, similar to those in a majority of the states, follow the federal rule that for purpose of preclusion, "a trial court judgment is final and has preclusive effect regardless of the fact that it is on appeal". See O'Brien v. Hanover Insurance Co., 692 N.E.2d 39, 44 (Mass. 1998). So even if there is an appeal pending there's still preclusion from a trial court judgment that's being appealed.

MR. WISHNEW: Agree, Your Honor. Absolutely.

THE COURT: Okay. But she argues that there's no res judicata because the claim is seeking to recover damages based on acts that occurred after the land court judgment. What's your response to that?

MR. WISHNEW: My response is that essentially she's basically saying -- I think she's wrong. And I think what it

is is that we got the foreclosure judgment. We went --

THE COURT: You didn't get a foreclosure judgment.

MR. WISHNEW: I'm sorry. We got the judgment affirming our rights to pursue the foreclosure. Reconsideration was denied. Appeal period expired. We pursued, as was recognized, our right to the nonjudicial foreclosure. And then we subsequently conveyed title to RFC. So the fact of the matter is it all derives -- any action derives from the course of the facts that was adjudicated by the Massachusetts Land Court. And so to try and say well, this happened after the fact, well, yes. Chronologically it happened after the fact. But it all goes back to Ms. Randle contesting the ability of GMAC Mortgage to foreclose. And so to say that it happened after the fact is disingenuous.

THE COURT: Let me ask you this. Should the Court consider arguments that she made in her response to the fiftieth omnibus objection? She did not incorporate by reference the prior response. She made some arguments in the response to the fiftieth omnibus objection that she has not repeated here. Should the Court consider those now?

MR. WISHNEW: I don't believe so, Your Honor. I mean, the Borrower Trust has not reincorporated the fiftieth omnibus objection. It made a decision, or the debtors at that time made a decision to withdraw the objection, because it felt it had a better ground to pursue it on res judicata, which the

Borrower Trust has now pursued. So we're moving forward on the record in relation to the sixtieth omni and don't think that Ms. Randle, if she hasn't sought the benefit of her earlier response, should be able to incorporate it now.

THE COURT: All right. I will take it under submission.

MR. WISHNEW: Thank you, Your Honor. So that concludes today's calendar, and, as always, appreciate your Court's time and patience.

THE COURT: Okay. Thank you.

(Whereupon these proceedings were concluded at 12:28 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sharona Shapiro

_____

SHARONA SHAPIRO

AAERT Certified Electronic Transcriber CETD-492**

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Date: March 27, 2014